

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20046085
K. VU) CDTFA Case ID: 0-001-919-493
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OPINION

Representing the Parties:

For Appellant: K. Vu
 For Respondent: Courtney Daniels, Tax Counsel III

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, K. Vu dba “VeeSonix” and “Laser World Karaoke” (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)¹ to appellant, on a timely petition for reconsideration of a Notice of Successor Liability (NOSL). The NOSL is for \$65,000 in tax, representing a portion of the unpaid sales tax liability of T.T. Huynh and T.A. Huynh (the partnership) for the period April 1, 2013, through March 31, 2016 (liability period).² The NOSL reflects CDTFA’s determination that appellant is liable as a successor for the partnership’s unpaid tax liabilities in accordance with R&TC section 6812.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant is liable as a successor for the unpaid sales tax liability of the partnership.

¹ Sales taxes were formerly administered by State Board of Equalization (BOE). In 2017, functions of BOE relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when referring to acts or events that occurred before July 1, 2017, “CDTFA” shall refer to BOE; and when referring to acts or events that occurred on or after July 1, 2017, “CDTFA” shall refer to CDTFA.

² The partnership’s liabilities consist of \$122,397 in tax, a 10 percent negligence penalty of \$12,239.75, plus accrued interest. Appellant’s successor liability was limited to the purchase price for the business: \$65,000.

FACTUAL FINDINGS

1. Appellant, a sole proprietor, operated as a wholesaler of karaoke machines, dba VeeSonix, holding a seller's permit from October 15, 2014, through March 27, 2018.
2. The partnership operated a business, "Laser World Karaoke & Music."
3. A "Bill of Sale" dated September 10, 2017, states that T.T. Huynh agrees to "sell, transfer, and convey" to appellant the "store," "Laser world." According to the Bill of Sale, appellant agreed to a purchase price of \$65,000, with \$5,000 allocated to equipment and \$60,000 to inventory.
4. An undated "Assignment of Lease Agreement" states that T.T. Huynh, dba "Laser World Karaoke," leases the "subject premises with the Lease Agreement (Lease) dated January 25, 2010. The document states that T.T. Huynh "intends to sell the business and assigns the Lease Agreement to [appellant] on October 1, 2017." The agreement is signed by T.T. Huynh.
5. One day after the purchase, appellant started business operations at the same location, using the name "Laser World Karaoke."³ Appellant used the same telephone number and website used by the partnership.
6. Appellant did not request a tax clearance certificate from CDTFA, nor did he obtain a receipt from CDTFA showing that all sales and use taxes had been paid, or a certificate stating that no sales and use taxes were due.
7. On September 29, 2017, CDTFA received a Notice of Closeout from the partnership signed by T.A. Huynh dated September 11, 2017, indicating that the partnership sold the business to appellant, and requesting the partnership seller's permit be terminated, effective September 11, 2017.
8. On October 12, 2017, CDTFA received an online application completed by appellant, requesting that the business "Laser World Karaoke" be added, as a second location, to his seller's permit account, effective September 11, 2017. According to a note in CDTFA's Centralized Revenue Opportunity System (CROS), appellant also informed CDTFA by telephone on October 12, 2017, that he purchased the business from the partnership, and provided CDTFA a copy of the Bill of Sale. As a result, CDTFA closed the partnership's

³ Appellant was registered with CDTFA using a dba of Veesonix and added a business location to that existing account using a dba of Laser World Karaoke with a seller's permit start date of September 11, 2017.

- seller's permit effective September 10, 2017, and added the "Laser World Karaoke" business as a second business location to appellant's seller's permit account.
9. CDTFA reviewed the Bill of Sale and the Assignment of Lease Agreement. CDTFA concluded that appellant continued to operate the seller's business website (i.e., Laser World Karaoke & Music) and Yelp.com business page. Also, according to a note in CROS dated September 27, 2017, T.A. Huynh stated that the partnership sold the business to appellant.
 10. CDTFA determined that appellant purchased the business from the partnership on or about September 10, 2017, and that appellant failed to obtain a tax clearance certificate from CDTFA, or to withhold from the purchase price an amount sufficient to cover the partnership's unpaid sales tax liabilities. Consequently, CDTFA determined that appellant is liable as a successor for the partnership's unpaid sales tax liabilities, and therefore it issued the NOSL to appellant on January 5, 2018.

DISCUSSION

Issue 1: Whether appellant is liable as a successor for the unpaid sales tax liabilities of the partnership.

When CDTFA is not satisfied with the amount of tax reported by the taxpayer, CDTFA may determine the amount required to be paid on the basis of any information within its possession or that may come into its possession. (R&TC, §§ 6481, 6511.) In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once CDTFA has met its initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from CDTFA's determination is warranted. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

R&TC section 6811 provides that if a person who has a sales tax liability sells his or her business or stock of goods, or quits the business, his or her successor shall withhold a sufficient amount (up to the amount of the purchase price of the business or stock of goods) to cover the tax liability of the former owner unless the former owner produces a receipt or certificate from CDTFA showing that the tax liability has been paid or that no tax is due. R&TC section 6812(a) provides, "[i]f the purchaser of a business or stock of goods fails to withhold from the purchase

price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money.” The liability of the successor or purchaser of a business or stock of goods includes all tax, interest, and penalties incurred by the former owner as a result of operating the business. (Cal. Code Regs., tit. 18, § 1702(b).) Neither R&TC section 6811 nor R&TC section 6812 requires that a purchaser be aware of the seller’s outstanding tax liability or expressly assume the seller’s debts for successor liability to attach.

The purchaser of the business or stock of goods will be released from further obligation to withhold from the purchase price if he or she obtains a certificate from CDTFA stating that no taxes, interest, or penalties are due from a predecessor. (Cal. Code Regs., tit. 18, § 1702(c).) He or she also will be released if he or she makes a written request to CDTFA for a certificate and CDTFA does not issue the certificate, or mail to the purchaser a notice of the amount of the tax, interest, and penalties that must be paid as a condition of issuing the certificate, within 60 days after the latest of the following dates: (1) the date CDTFA receives a written request from the purchaser for a certificate; or (2) the date of the sale of the business or stock of goods; or (3) the date the former owner’s records are made available for audit. (*Ibid.*)

“Business” includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect. (R&TC, § 6013.) Therefore, the term “business” is not limited to the tangible personal property assets of a business enterprise but includes all of the intangibles of the business activity.⁴ There is no dispute that on September 11, 2017, the day after the sale, appellant opened the business, “Laser World Karaoke,” selling the same type of goods (i.e., karaoke machines and related equipment) that had been sold by the similarly named business of the partnership, “Laser World Karaoke & Music.” Appellant’s business operated in the same location operated by the partnership and retained the same business telephone number and website used by “Laser World Karaoke & Music.”

In addition, the Bill of Sale indicates that appellant purchased the “store” known as “Laser World.” A Notice of Closeout states that the partnership sold the business to appellant. In the Assignment of Lease Agreement, T.T. Huynh states that he intends to “sell the business”

⁴ See CDTFA Annotation 535.0002 (June 5, 1991). “The annotations are “entitled to ‘great weight’ . . . when, as here, [CDTFA] is construing a statute it is charged with administering and that statutory interpretation is longstanding.” (*Appeal of Praxair, Inc.*, 2019-OTA-301P.)

and assign the lease to appellant. Therefore, we find that appellant acquired all of the assets normally associated with a business, including the lease, equipment, inventory, tradename, and goodwill. Appellant argues that the Bill of Sale is invalid. However, appellant has not provided evidence to contradict the clear language of the Bill of Sale or to otherwise show that both he and the partnership did not intend for a sale and purchase of the business. Appellant also contends that the partnership informed him that 3 months remained on the lease, but there were, in fact, 3 years and 3 months remaining. Appellant argues that, as a result, he refused to sign the lease, vacated the location, and moved all items from the store to storage. However, the successorship liability attaches by reason of the purchase of the business (or stock of goods) and not by reason of its continued operation. (See R&TC, § 6812.) Thus, we conclude that appellant purchased the business.

Appellant acknowledges that he did not withhold any amount of the purchase price to cover the partnership's unpaid sales tax liabilities, and there is no evidence that he requested or obtained a tax clearance certificate from CDTFA stating that no amounts were due. Therefore, we find that CDTFA has met its minimal burden to show a reasonable basis for imposing successor liability on appellant and, as a result, the burden of proof shifts to appellant to show that he should not be held liable as a successor.

Appellant argues that he should not be liable for the unpaid taxes at issue because the partnership did not disclose the delinquent liabilities to him. However, neither R&TC section 6811 nor 6812 requires that a purchaser be aware of the seller's outstanding tax liability or expressly assume the seller's debts for successor liability to attach. Appellant also argues that the partnership remains liable for the debts that it incurred prior to the sale, in accordance with a November 2, 2017 letter signed by T.T. Huynh. We note that such an agreement has no impact on appellant's liability as a successor because the agreement is a private contract between appellant and the partnership, and CDTFA is not a party to the contract. There is no provision in the Sales and Use Tax Law that would allow a taxpayer to legally shift its liability to CDTFA for unpaid taxes to another party. As a result, any contractual shifting of tax burdens is a matter exclusively between the contracting parties and has no effect on appellant's successor liability vis-à-vis the State. (Civ. Code, § 1656.1; *Pacific Coast Engineering Company v. State of California* (1952) 111 Cal.App.2d 31, 34.) Of course, any amounts paid towards the liabilities at

issue here by the partnership, reducing the partnership’s tax liabilities below \$65,000, will reduce the amount that may be collected from appellant.

Based upon the foregoing, we find that appellant is liable as a successor for the payment of the partnership’s outstanding sales tax liabilities to the extent of the purchase price.

HOLDING

Appellant is liable as a successor for the unpaid sales tax liabilities of the partnership.

DISPOSITION

CDTFA’s action denying the petition is sustained.

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Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

DocuSigned by:
Andrew J. Kwee
715CE19AD48041B...
Andrew J. Kwee
Administrative Law Judge

Date Issued: 11/18/2020