OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **A. EVDOKIMOV AND** **E. SHIKHATOV**	OTA Case No.: 241017595 CDTFA Case ID: 2-553-725

OPINION

Representing the Parties:

For Appellant: E. Shikhatov

For Respondent: Jennifer Barry, Attorney

For Office of Tax Appeals: Oliver Pfost, Attorney

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, E. Shikhatov (appellant) appeals a decision (the decision) issued by the California Department of Tax and Fee Administration (respondent) denying, in part, appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on January 12, 2021.[1] The NOD is for tax of $60,719, plus applicable interest, and a failure-to-file penalty of $6,071.87 for the period February 1, 2017, through June 30, 2020 (liability period).[2] A subsequent reaudit reduced the sales tax liability to $57,683 and the failure-to-file penalty to $5,768.32.

Appellant waived the right to an oral hearing and submitted the matter to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

[1] The decision found that appellant and A. Evdokimov were partners in a cannabis cultivation and sales business and, as partners, they are jointly and severally liable for taxes, a penalty, and interest due in connection with retail sales of cannabis. Only appellant appealed to the Office of Tax Appeals (OTA). The decision's findings that A. Evdokimov was a partner in the cannabis cultivation and sales business is final because A. Evdokimov did not appeal that finding to OTA. However, because of this appeal, the liability asserted against the partnership and both alleged partners is not yet final. Accordingly, this appeal remains titled "*Appeal of Evdokimov & Shikhatov*."

[2] The NOD was timely because no one filed sales and use tax returns to report the taxes at issue, and respondent issued the NOD within eight years after the last day of the calendar month following the quarterly periods for which respondent determined liabilities. (R&TC, § 6487(a).)

ISSUES

1. Are A. Evdokimov and appellant jointly and severally liable as partners for taxes due in connection with their sales of cannabis during the liability period?
2. Is a further adjustment to the measure of unreported taxable cannabis sales warranted?

FACTUAL FINDINGS

1. In 2016, California voters passed Proposition 64, also known as the Adult Use of Marijuana Act, which set up the basic framework for licensing, oversight, and enforcement related primarily to recreational cannabis. Many aspects of the cannabis business are carefully regulated, including licensing, cultivation, testing, manufacturing, packaging, labeling, and sales of cannabis and cannabis products. California also employs a track-and-trace system, which licensees are required to use to track cannabis from seed to sale.
2. At all times during the liability period, retail sales of cannabis in California were subject to tax.
3. According to a Los Angeles Police Department Report (the police report), of which pages 2 through 7 of 22 are in evidence, the following occurred on April 3, 2020:
    - Police executed a search warrant at a residence in Los Angeles (the premises) occupied by A. Evdokimov, his spouse and minor child, and appellant, all of whom were at the premises when the police conducted the search.
    - The search discovered 256 live cannabis plants with a total fresh harvest weight of 115.87 pounds growing in the house and garage under 18 grow lights.[3] Seven exhaust fans, two carbon dioxide controllers and an air conditioning unit were also in use. The search also found a digital scale containing a green leafy substance resembling cannabis and several stacks of U.S. currency, one of which contained 241 $20 bills ($4,820).
    - During an interview at the premises by police, A. Evdokimov stated that he had been renting the premises since February 2017. A. Evdokimov's spouse told the police that she, her husband, and their child had been living at the premises for about three years and that she knew nothing about the cannabis.[4] Appellant

[3] As used herein, "fresh harvest weight" refers to the weight of the plant when harvested (i.e., before it is dried as part of the processing for use).

[4] The police report indicates that she later recanted her statement that she knew nothing about the cannabis.

stated that A. Evdokimov, his wife, and their child had been living at the premises for "a couple of years." A. Evdokimov and appellant stated that the cannabis was for their personal use.

- During a police interview, A. Evdokimov stated that the cannabis plants take approximately four months from seed to harvest and that he makes approximately $9,000 from each harvest. A. Evdokimov stated that he does not personally sell the cannabis and that appellant was his business partner.

4. Utility records obtained by respondent indicate that A. Evdokimov started water and electric services (as well as other utility services) at the premises on January 30, 2017. For the first 46 days (January 30, 2017, through March 17, 2017), electricity consumption averaged 33.15 kilowatt hours (KWH) per day. For the remaining billing periods, which averaged approximately 61 days, electricity consumption at the premises was between 158 KWH and 259 KWH per day. The electricity bill was $258.55 for the first 46 days of occupancy and between approximately $2,278 and $4,313 for all of the remaining billing period except the 62-day period ending November 14, 2018, for which the bill was approximately $1,231.
5. Based on the information contained in the police report, the electricity bills, and four web articles that discuss various aspects of cannabis cultivation and processing, respondent concluded A. Evdokimov and appellant were partners and that their partnership made retail sales of taxable cannabis during the liability period.[5] On that basis, respondent issued a seller's permit to the partnership, with an effective date of February 1, 2017.
6. No one filed sales and use tax returns to report the partnership's cannabis sales during the liability period.
7. Respondent notified A. Evdokimov and appellant that their business had been selected for an audit and asked them to provide books and records. No one complied with the

[5] Respondent relied on the following:

- The web article *Annex 2 - Estimating Yield* states that after trimming, the wet plant to dry product ratio is said to be about 14 per cent (https://www.unodc.org/pdf/WDR_2006/wdr2006_chap2_annex2.pdf);
- The web article *The High Times Pro Guide to Harvesting* states the final air-dried weight will be around 20% of the fresh harvest weight (https://hightimes.com/grow/the-high-times-pro-guide-to-harvesting/);
- The web article *Curing and Drying Cannabis in a Few Simple Steps* estimates losses of 65 percent to 80 percent resulting from drying cannabis (https://www.dutch-headshop.eu/blog/curing-and-drying-cannabis-in-a-few-simple-steps); and
- The web article *Understanding Marijuana Plant Stages* estimates the marijuana growth cycle at between 10 and 26 weeks (https://weedmaps.com/learn/the-plant/understanding-marijuana-plant-stages).

request. Consequently, respondent used information contained in the police report to estimate appellant's taxable sales.

8. Respondent started with what it apparently believed to be the fresh harvest weight of the seized plants: 105.56 pounds.[6] Respondent reduced that fresh harvest weight to calculate a dry, usable weight of 15.83 pounds and then converted that to 7,182 grams.[7]

9. Respondent estimated an average one-eighth ounce retail price of $45, converted that to a retail price per gram of $12.86, and calculated a retail value of the seized plants of $92,344.[8] Respondent thus concluded that appellant's taxable sales per harvest were $92,344.

10. Based on the reference article cited by respondent (10- to 26-week grow cycle) and A. Evdokimov's statement that the grow cycle was approximately four months (17.36 weeks), respondent estimated an average grow cycle of five months (21.7 weeks) and on that basis concluded that appellant would have reaped 7 harvests during the liability period, not including the seized plants. Respondent thus calculated estimated unreported taxable cannabis sales totaling $646,408 during the liability period.

11. Respondent issued an NOD to A. Evdokimov and appellant for tax of $60,719, plus interest, and a failure-to-file penalty of $6,072.

12. A. Evdokimov filed a petition for redetermination of the NOD, which respondent accepted on behalf of the partnership.

13. The parties, including A. Evdokimov and appellant, participated in an appeals conference as part of respondent's internal appeals procedure.

14. On June 11, 2024, respondent issued the decision, which ordered a reaudit to reduce the measure of unreported taxable sales by 5 percent to account for waste, destruction, and self-consumption, but otherwise denying the petition for redetermination.

15. Respondent conducted the reaudit, which reduced the taxable measure to $614,089, which in turn reduced the sales tax liability to $57,683 and the failure-to-file penalty to $5,768.32.

16. Respondent informed A. Evdokimov and appellant regarding the results of the reaudit.

17. This timely appeal to OTA followed.

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[6] The police report refers to 115.87 pounds of seized plants. It appears that respondent failed to consider 10.31 pounds of cannabis.

[7] According to OTA's calculation, that amount should be 7,180 grams. The difference is immaterial to OTA's findings herein.

[8] According to OTA's calculation, that amount should be $92,360.52.

DISCUSSION

Issue 1: Are A. Evdokimov and appellant jointly and severally liable as partners for taxes due in connection with their sale of cannabis during the liability period?

The first question is whether there is sufficient evidence of a partnership between A. Evdokimov and appellant, the purpose of which was to cultivate and sell cannabis in this state. Under California law, a partnership is an association of two or more persons to carry on as co-owners a business for profit, whether or not the persons intend to form a partnership. (Corp. Code, §§ 16101(a)(9), 16202(a).) A partnership agreement can be written, oral, or implied. (Corp. Code, § 16101(a)(10).) A partnership may be found to have been organized between two or more individuals where the actions and declarations of the individuals show they intend to carry on a business as co-owners. (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 482-483.) The intent of individuals to be partners may be implied by their actions, and it is not necessary that individuals formally designate their business relationship as a partnership. (*Eng. v. Brown* (2018) 21 Cal.App.5th 675, 693.) The existence of a partnership is a question of fact that is determined by a preponderance of the evidence. (*Weiner v. Fleischman*, *supra*, 54 Cal.3d at p. 490; see Cal. Code Regs., tit. 18, § 30219(b).)

The burden of proving the existence of the partnership rests with the party that asserts it. (*Jones v. Goodman* (2020) 57 Cal.App.5th 521, 531.) Here, respondent has that burden. (See Cal. Code Regs., tit. 18, § 30219(a).) OTA finds that the burden of producing *prima facie* evidence of the existence of the partnership rest with respondent.[9] If respondent shows the existence of the partnership, the burden of producing evidence will shift to appellant, who must at least refute respondent's showing. (See Evid. Code, § 550; *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal. 4th 421, 436.)

According to the police report, A. Evdokimov and appellant were growing 256 cannabis plants at the home they occupied with A. Evdokimov's wife and child. A. Evdokimov and appellant both stated to the police that the cannabis was for their personal consumption. Considering the quantities of cannabis involved, which effectively refute the statements that the cannabis was for the personal use of A. Evdokimov and appellant, and the statements made by A. Evdokimov and appellant, including A. Evdokimov's statement to the police that he made approximately $9,000 per harvest, OTA finds that respondent has provided *prima facie* evidence to show that A. Evdokimov and appellant were involved in a cannabis cultivation and sales

[9] A "prima facie case is one which is received or continues until the contrary is shown and can be overthrown only by rebutting evidence adduced on the other side. [Citation omitted.]" *Maganini v. Quinn* (1950) 90 Cal.App.2d 1, 8.)

partnership, and to shift the burden to appellant to produce evidence sufficient to refute respondent's showing.

Appellant contends that the evidence is insufficient to support a finding that A. Evdokimov and appellant were partners. Appellant disputes the facts upon which respondent relies. He argues that the information contained in the police report is speculation, not evidence, and appellant suggests that statements that the police report attributes to A. Evdokimov and appellant are inaccurate due, at least in part, to the fact that A. Evdokimov and appellant are not proficient at English. Finally, appellant contends that the "case" was rejected and closed, which OTA takes to mean that the police or District Attorney dropped criminal charge(s) against appellant, A. Evdokimov or both.

Regarding the criminal charge(s), even if there was persuasive evidence that criminal charges were dropped (appellant's unsupported assertion is not persuasive evidence), it would constitute little more than an unsupported and largely immaterial opinion regarding the strength of a criminal case(s) and would have little, if any, bearing on OTA's analysis of appellant's civil liability.

Regarding the sufficiency of the evidence, OTA is not a court of law. Generally, rules relating to evidence and witnesses contained in the Evidence Code and Code of Civil Procedure do not apply to appeals to OTA, and all relevant evidence is admissible. (Cal. Code Regs., tit. 18, § 30214(f), (f)(1).) However, OTA does use the California rules of evidence as guidance when weighing evidence. (Cal. Code Regs., tit. 18, § 30214(f)(4).)

OTA has already found that the information contained in the police report constitutes *prima facie* evidence that A. Evdokimov and appellant were partners. OTA rejects appellant's assertion that the police officer's recorded observations regarding the quantity and location of the growing cannabis plants are unreliable. OTA also rejects appellant's assertion that the police officers misunderstood or misinterpreted statements made by A. Evdokimov and appellant during the search and seizure. The police report clearly described the statements made by appellant, his partner, and his partner's spouse. There is nothing in the police report to suggest a possible misunderstanding by the investigating officers or that any of the occupants of the home were misled or coerced into making admissions regarding the cultivation, ownership, or sale of the cannabis. In addition to being admissions against their self-interest, A. Evdokimov's and appellant's statements described in the police report are inconsistent with appellant's position in this appeal. There also is the corroborating evidence that documents the significant electricity use by the premises, which is consistent with the use of 18 grow lights, seven exhaust fans, two carbon dioxide controllers, and an air conditioning unit. Consequently,

OTA finds that A. Evdokimov and appellant were partners and that the partnership existed to cultivate and sell cannabis in this state.

The next question is whether the partnership made sales of cannabis during the liability period. OTA finds that it did on the basis of the *prima facie* evidence previously described, including the quantity of seized cannabis and cash, the relatively sophisticated growing equipment in use at the premises, the substantial electricity bills, A. Evdokimov's and appellant's acknowledgement of ownership of 115.87 pounds of cannabis, and A. Evdokimov's statements regarding his partnership with appellant, the growth and harvesting cycle, and how much he made from each harvest. The law presumes that those sales were retail sales. (R&TC, § 6091.)

While appellant disputes the existence of a partnership and retail sales, he does not appear to dispute the joint and several liability of partners for the obligations of a partnership. Nevertheless, OTA will briefly discuss the legal bases for such liability. Partners are jointly and severally liable for all obligations of the partnership unless otherwise provided by law. (Corp. Code, § 16306(a).) Corporations Code section 16307(c) and (d), which limit a judgement creditor's right to satisfy a judgement against only a partnership by proceeding against the assets of the individual partners, does not apply to respondent unless at the time of application for a seller's permit, the applicant furnishes to respondent a written partnership agreement that provides that all business assets shall be held in the name of the partnership. (R&TC, § 6831.) Appellant concedes that he did not apply for a seller's permit. On the basis of the evidence, OTA finds that A. Evdokimov and appellant are jointly and severally liable as partners for taxes due in connection with their sale of cannabis during the liability period.

Issue 2: Is a further adjustment to the measure of unreported taxable cannabis sales warranted?

California imposes sales tax on a retailer's retail sales of tangible personal property sold in this state measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) For the purpose of the proper administration of the Sales and Use Tax Law and to prevent the evasion of the sales tax, the law presumes that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091.) It is the retailer's responsibility to maintain complete and accurate records to support reported amounts and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

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

Appellant did not file any sales and use tax returns for the liability period. Respondent requested books and records from appellant, but none were provided. OTA finds that respondent's decision to use information contained in the police report was a rational one and that its calculations of a typical annual harvest (256 cannabis plants), average usable yield (7,182 grams of dry cannabis product), estimated annual gross receipts from retail sales ($92,344), and harvest frequency (every five months) were both reasonable and rational based on information contained in the police report. OTA also finds that respondent's calculation of taxable sales for the liability period ($614,089), which was simply a matter of adding the retail value of the seven harvests during the liability period, was also reasonable, as was respondent's subsequent reduction of the taxable measure for waste, destruction, and self-consumption. The burden of proof thus shifts to appellant, who must prove error and a more accurate taxable measure. (*Appeal of AMG Care Collective*, 2020-OTA-173P.)

Appellant denies liability, but he has offered no evidence, or even an explanation that is more credible than respondent's. OTA therefore finds that appellant has failed to carry his burden of proof. On that basis, OTA concludes that a further adjustment to the measure of unreported taxable cannabis sales is not warranted.

HOLDINGS

1. A. Evdokimov and appellant are jointly and severally liable as partners for taxes due in connection with their sale of cannabis during the liability period.
2. A further adjustment to the measure of unreported taxable cannabis sales is not warranted.

DISPOSITION

Respondent's action denying, in part, appellant's petition for redetermination is sustained.

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Michael F. Geary
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Michael F. Geary
Administrative Law Judge

We concur:

DocuSigned by:
Josh Aldrich
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Josh Aldrich
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
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Date Issued: 8/19/2025