2026-OTA-371
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **W. TAYLOR**	OTA Case No.: 250319106 CDTFA Case ID: 4-558-257

OPINION

Representing the Parties:

For Appellant: Mitchell Stradford, Representative

For Respondent: Sunny Paley, Attorney

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, W. Taylor (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying appellant's timely petition for redetermination of a Notice of Dual Determination (NODD) issued on December 23, 2022. The NODD is for tax of 159,683.07, plus applicable interest, and late payment penalties totaling $10,367.80 for the period July 1, 2013, through July 5, 2020 (liability period).[2] The NODD reflects CDTFA's determination that appellant is personally liable as a responsible person for the unpaid sales tax liabilities of Hibachi 13 LLC, dba Iron Steaks (Hibachi 13) pursuant to R&TC section 6829.

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

[1] Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

[2] The NODD was timely issued because it was mailed within three years after the last day of the calendar month following the quarterly period in which CDTFA obtained actual knowledge of the termination, dissolution, or abandonment of the business. (R&TC, § 6829(f); Cal. Code Regs., tit. 18, § 1702.5(c)(2)(A).) As explained below, CDTFA obtained actual knowledge of the termination, dissolution, or abandonment of the business on April 26, 2022.

ISSUE

Whether appellant is personally liable for the unpaid tax liabilities of Hibachi 13.

FACTUAL FINDINGS

1. On June 13, 2008, appellant filed Articles of Organization for Hibachi 13, a California LLC operating a restaurant located in Sacramento, California, indicating that the LLC will be managed by a single manager. CDTFA issued Hibachi 13 a seller's permit effective from June 13, 2008, through July 5, 2020.
2. On August 14, 2009, appellant signed Hibachi 13's application for seller's permit, identifying appellant Hibachi 13's sole managing member and the person maintaining its business records.
3. Hibachi 13's Alcohol Beverage Control (ABC) license, effective August 24, 2009, identifies appellant as the only member and stockholder of Hibachi 13.
4. On October 2, 2017, appellant filed a Statement of Information for Hibachi 13 identifying appellant as its sole member, managing director, and CEO. On December 12, 2020, appellant filed a Statement of No Change.
5. Appellant electronically filed Hibachi 13's sales and use tax returns (SUTRs) for the entire liability period, from the third quarter of 2013 (3Q13) through 3Q20.
6. On April 25, 2022, CDTFA documented a telephone call in which appellant stated that Hibachi 13 "has not really been operating since July 2020." On April 26, 2022, CDTFA documented another telephone call in which appellant stated that Hibachi 13's last day of operations was July 5, 2020. Appellant indicated he had used sales tax reimbursement collected to pay various business expenses and that he would not be able to operate another business if he had to pay sales tax. Appellant also confirmed that Hibachi 13 always charged and collected sales tax, and that he was the only person responsible for its sales and use tax matters.
7. According to the California Secretary of State's website, Hibachi 13 has been FTB suspended status with an inactive date of April 1, 2021.
8. Appellant was involved with CDTFA's audit of Hibachi 13 for the period July 1, 2013, through June 30, 2016. Appellant was Hibachi 13's primary point of contact and the person who provided Hibachi 13's books and records. Appellant signed, as Hibachi 13's managing director, various documents including a Power of Attorney form, an Authorization for Electronic Transmission of Data form, and several Waiver of Limitation forms.

9. Appellant requested installment payment plans to pay for Hibachi 13's unpaid sales tax liabilities, for periods prior to and during the liability period.
10. Various sales receipts and sales reports throughout the liability period show that Hibachi 13 collected sales tax reimbursement from customers.
11. Appellant signed Hibachi 13's business checks throughout the liability period.
12. During the liability period, Hibachi 13 paid wages totaling $2,863,777.81.[3]
13. During the liability period, Hibachi 13 received payments from merchant payment processors totaling $6,871,420.[4]
14. CDTFA determined that appellant was personally liable for Hibachi 13's unpaid sales tax liabilities pursuant to R&TC section 6829. CDTFA issued the NODD to appellant.
15. Appellant untimely filed a petition for redetermination, which CDTFA accepted as an administrative protest.
16. CDTFA issued a decision denying the administrative protest.
17. Appellant timely filed this appeal.

DISCUSSION

R&TC section 6829 provides, in pertinent part, that any member or manager can be held personally liable for the unpaid tax, penalties, and interest owed by an LLC, if all of the following elements are met: (1) the LLC's business has been terminated, dissolved, or abandoned; (2) the LLC collected sales tax reimbursement on its sales of tangible personal property and failed to remit such tax reimbursement to CDTFA when due; (3) the person had control or supervision of, or was charged with the responsibility for, the filing of SUTRs or the payment of tax, or had a duty to act for the LLC in complying with the Sales and Use Tax Law; and (4) the person willfully failed to pay taxes due from the LLC or willfully failed to cause such taxes to be paid. (R&TC, § 6829(a), (c); Cal. Code Regs., tit. 18, § 1702.5(a), (b).) CDTFA must prove these elements by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 1702.5(d).) That is, CDTFA must establish that the circumstances it asserts are more likely than not to be correct. (*Appeal of AMG Care Collective*, 2020-OTA-173P.)

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[3] Hibachi 13 paid wages of $227,842.23 in 2014, $529,210.76 in 2015, $528,484.26 in 2016, $490,408.44 in 2017, $407,277.54 in 2018, $497,246.47 in 2019, and $183,308.11 in 2020.

[4] Hibachi 13 received payments of $92,542 in 2013, $896,799 in 2014, $1,190,202 in 2015, $1,210,079 in 2016, $1,132,428 in 2017, $1,076,556 in 2018, $1,054,075 in 2019, and $218,739 in 2020.

Termination

The "termination" of the business of an LLC includes the cessation of all business activities for which the LLC was required to hold a seller's permit. (Cal. Code Regs., tit. 18, § 1702.5(b)(3).)

Here, there is no dispute that Hibachi 13 terminated operations. Additionally, according to CDTFA's notes dated April 25, 2022, appellant notified CDTFA that Hibachi 13's restaurant stopped operating in July 2020. CDTFA closed out Hibachi 13's seller's permit effective July 5, 2020. Additionally, the California Secretary of State's website shows that Hibachi 13 is in FTB suspended status and inactive as of April 1, 2021. Therefore, OTA finds that the first element has been satisfied.

Collection of Sales Tax Reimbursement

As relevant here, personal liability can be imposed only to the extent the LLC collected tax reimbursement on its sales of tangible personal property in this state. (R&TC, § 6829(c); Cal. Code Regs., tit. 18, § 1702.5(a).)

Copies of sales receipts issued by Hibachi 13 throughout the liability period show that sales tax reimbursement was added to the price of tangible personal property sold. Sales reports throughout the liability period also indicate Hibachi 13 collected sales tax reimbursement on its sales of tangible personal property. In addition, CDTFA notes dated April 26, 2022, show that appellant acknowledged Hibachi 13 collected sales tax reimbursement from its customers. Appellant does not dispute that Hibachi 13 collected sales tax reimbursement on its sales of tangible personal property during the liability period. Consequently, OTA finds that Hibachi 13 collected sales tax reimbursement from its customers during the liability period, and the second element has been satisfied.

Responsible Person

Personal liability can only be imposed on a responsible person. (R&TC, § 6829(b).) A "responsible person" means any person having control or supervision of, or who was charged with the responsibility for, the filing of SUTRs or the payment of tax or who had a duty to act for the LLC in complying with any provision of the Sales and Use Tax Law when the taxes became due. (*Ibid*.; Cal. Code Regs., tit 18, § 1702.5(b)(1).) As relevant here, personal liability applies only if, when the person was a responsible person for the LLC, the LLC sold tangible personal property and collected sales tax reimbursement on the selling price of the property but failed to remit such tax reimbursement when due. (Cal. Code Regs., tit. 18, § 1702.5(a).)

Here, appellant was the sole manager/member and CEO of Hibachi 13, as evidenced by Hibachi 13's Statement of Information and ABC license. CEOs are presumed to have broad implied and actual authority to do all acts customarily connected with the business. (See *Commercial Security Co. v. Modesto Drug Co.* (1919) 43 Cal.App. 162 173-174.) On Hibachi 13's seller's permit application, appellant identified himself as the person who maintained Hibachi 13's books and records. Appellant electronically filed all of Hibachi 13's SUTRs for the period at issue. Also, appellant requested installment payment plans and made promises to pay Hibachi 13's unpaid sales tax liabilities. Finally, appellant conceded during the April 26, 2022 telephone conversation with CDTFA that he was the sole person responsible for Hibachi 13's sales and use tax matters. Appellant does not dispute that he was a responsible person for Hibachi 13, and there is no evidence in OTA's record that suggests any other person was responsible. Therefore, OTA finds that appellant was a responsible person for Hibachi 13's sale and use tax compliance, and the third element is satisfied.

Willfulness

"Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action. (R&TC, § 6829(d); Cal. Code Regs., tit. 18, § 1702.5(b)(2).) A failure may be found willful even if it was not done with a bad purpose or motive. (Cal. Code Regs., tit. 18, § 1702.5(b)(2).) To show willfulness, CDTFA must establish the following: (1) on or after the date that the taxes came due, the responsible person had actual knowledge that the taxes were due but not being paid; (2) the responsible person has the authority to pay the taxes or to cause them to be paid on the date the taxes came due and when the person has actual knowledge; and (3) the responsible person had the ability to pay the taxes or to cause them to be paid when the person had actual knowledge but chose not to do so. (Cal. Code Regs., tit. 18, § 1702.5(b)(2).)

The first requirement for a finding of willfulness is that the responsible person had actual knowledge that the taxes were due, but not being paid. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(A); *Appeal of Eichler*, 2022-OTA-029P.) As stated above, appellant has been the person responsible for Hibachi 13's sales and use tax compliance from the time it began operations until it closed, and throughout the entire liability period. Appellant filed all of Hibachi 13's SUTRs, including SUTRs in which Hibachi 13 self-assessed tax but did not remit sufficient tax payments. Appellant participated in Hibachi 13's audit, communicated with CDTFA regarding its unpaid liabilities, and arranged for installment payment plans for its unpaid liabilities. CDTFA's notes dated April 26, 2022, indicate that appellant used the sales tax reimbursement collected from customers to pay operating expenses. The evidence establishes appellant had actual knowledge that the subject taxes were due but not being paid. Appellant does not dispute that he had actual knowledge that Hibachi 13's taxes were due but not being paid. Therefore ,OTA finds that the first requirement for a finding of willfulness has been met.

The second requirement for a finding of willfulness is that the responsible person had authority to pay the taxes or to cause them to be paid. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(B).) This authority must coincide with the first requirement, actual knowledge, meaning that the person must have had the authority to pay the taxes actually known to be due. (*Ibid*.) As explained above, appellant filed all of Hibachi 13's SUTRs, requested installment payment plans to pay Hibachi 13's unpaid tax liabilities, and was the only person responsible for Hibachi 13's sales and use tax compliance. Appellant also signed business checks drawn on Hibachi 13's bank account. There is no evidence in OTA's record to suggest that anyone else had the authority to sign checks or take any other action for Hibachi 13. Appellant does not dispute that he had authority to pay Hibachi 13's taxes. OTA finds that appellant had the authority to pay the taxes or cause them to be paid, and the second requirement for a finding of willfulness has been met.

The third requirement for willfulness is that when the responsible person had actual knowledge that taxes were due and the authority to pay the taxes, that person also had the ability to pay the taxes but chose not to do so. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(C).) A business had the ability to pay its taxes if it had funds available but chose to pay other expenses instead. (See, e.g., *Appeal of Treyzon*, 2023-OTA-399P; *Appeal of Eichler*, 2022-OTA-029P.) Here, Hibachi 13 collected sales tax reimbursement from its customers. Those amounts alone should have been sufficient to pay the taxes due. Moreover, during the liability period, Hibachi 13 paid wages totaling $2,863,777.81, and received payments from merchant payment processors totaling $6,871,420. Based on the evidence, Hibachi had sufficient funds to pay taxes when appellant had the knowledge that taxes were due and the authority to pay the taxes, but appellant chose to use available funds to pay other expenses besides its sales tax liabilities. Therefore, the third and final requirement for a finding of willfulness has been met.

Appellant contends that he did not willfully fail to pay Hibachi 13's unpaid tax liabilities. However, appellant offers no evidence to support his contention. Appellant's failure to pay may be found willful even if it was not done with a bad purpose or motive. (Cal. Code Regs., tit. 18, § 1702.5(b)(2).) Based on the foregoing, OTA finds that appellant willfully failed to pay the taxes or cause them to be paid when due.

In summary, OTA finds that the evidence establishes all of the elements required for the imposition of liability on appellant as a person responsible for the unpaid liabilities of Hibachi 13 under R&TC section 6829.

HOLDING

Appellant is personally liable for the unpaid tax sales liabilities of Hibachi 13.

DISPOSITION

CDTFA's action denying appellant's administrative protest is sustained.

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

We concur:

DocuSigned by:
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Keith T. Long
Administrative Law Judge

Signed by:
Natasha Ralston
25F8FE08FF56478...
Natasha Ralston
Administrative Law Judge

Date Issued: 4/14/2026