OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

T ZONE TRADING

OTA Case No.: 241118015
CDTFA Case ID: 4-814-836

OPINION

Representing the Parties:

For Appellant: Samir Salloum, Representative

For Respondent: Mari Guzman, Attorney

For Office of Tax Appeals: Daniel Cho, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 6561, T Zone Trading (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant's timely petition for reconsideration of a Notice of Successor Liability (NOSL) issued on March 27, 2023. The NOSL is for tax of $9,410 for the period April 1, 2018, through March 31, 2022 (liability period).[1] In addition, the NOSL reflects CDTFA's determination that appellant is liable as a successor for the unpaid sales tax liabilities of El Fady Inc. (Fady) pursuant to R&TC section 6812.

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, section 30209(a).

ISSUE

Whether appellant is liable as a successor for the unpaid sales tax liabilities of Fady.

[1] The NOSL was capped at the purchase price of $9,410.

FACTUAL FINDINGS

1. Prior to March 1, 2022, Fady operated a business named Classic Tobacco in Norwalk, California. In addition, Fady had an outstanding sales tax liability of at least $9,410, which was based on an audit for the liability period.[2]
2. On March 10, 2022, Fady and appellant entered into an agreement titled "Bill of Sale for Business Assets." According to this agreement, Fady transferred full ownership of its furniture, fixtures, and inventory for a total sales price of $9,410. The agreement also indicated appellant would be doing business as Classic Tobacco.
3. Fady and appellant did not use an escrow company to facilitate the transfer of the furniture, fixtures, or inventory. In addition, appellant did not request a tax clearance certificate from CDTFA, nor did appellant withhold any of the purchase price for Fady's unpaid sales tax liability.
4. Appellant obtained a new seller's permit with an effective start date of March 11, 2022, for the same location that Fady operated its business. The seller's permit application also reported that appellant purchased the business.
5. On March 14, 2022, appellant executed a Commercial Triple Net Lease effective April 1, 2022.[3] According to this lease, appellant agreed to lease the premises on which Fady previously operated.
6. Subsequently, CDTFA investigated whether appellant could be held liable as a successor of Fady pursuant to R&TC sections 6811 and 6812. Based on its investigation, CDTFA concluded that appellant was liable for Fady's unpaid sales tax liabilities but only up to the purchase price of the business, or $9,410.
7. On March 27, 2023, CDTFA issued a timely NOSL.[4]
8. Appellant filed a timely petition for reconsideration.
9. CDTFA issued a decision denying the petition for reconsideration.
10. This timely appeal followed.

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[2] It is unclear when CDTFA completed the audit of Fady or what comprised the final audit liability. However, there is no dispute as to the amount of Fady's predecessor liability at issue in this appeal. Therefore, OTA will not discuss it further.

[3] The Commercial Triple Net Lease was between the lessor Alondra and Pioneer Property LLC and the lessees S. Salloum and T. Jabbour, who are officers of appellant.

[4] The NOSL was timely because it was issued within three years of March 11, 2022 (i.e., when CDTFA received notice of Appellant's purchase of the business or stock of goods, based on appellant requesting a new seller's permit for its new business). (See RTC § 6814(a); Cal. Code Regs., tit. 18, § 1702(d)(1).)

DISCUSSION

R&TC section 6811 provides that if a person who has a sales tax liability sells the business or stock of goods, or quits the business, the successor (purchaser) 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. If a purchaser of a business or stock of goods fails to withhold from the purchase price as required, the purchaser 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. (R&TC, § 6812(a).) 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 the purchaser obtains a certificate from CDTFA stating that no taxes, interest, or penalties are due from a predecessor. (Cal. Code Regs., tit. 18, § 1702(c).) The purchaser will also be released if the purchaser 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; (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.*)

Generally, the taxpayer bears the burden of proof as to all issues of fact. (Cal. Code Regs., tit. 18, § 30219(a).) The standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) That is, a taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of AMG Care Collective*, 2020-OTA-173P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Las Playas #10, Inc.*, 2021-OTA-204P.)

Here, there is no dispute that Fady operated a business as Classic Tobacco prior to March 10, 2022. In addition, based on the evidentiary record, appellant and Fady entered into a "Bill of Sale for Business Assets" in which Fady transferred its furniture, fixtures, and inventory to appellant for $9,410 on March 10, 2022. Afterwards, appellant began operating its business at the same location and, according to the sales agreement, using the same business name as Fady. Appellant entered into a new lease agreement with the landlord, effective April 1, 2022, and in its application for a new seller's permit effective March 11, 2022, appellant reported to CDTFA that it purchased the business. Based on the foregoing, OTA finds that CDTFA's determination that appellant purchased the business from Fady and was liable as a successor pursuant to R&TC section 6812 was reasonable and rational. (*Appeal of Las Playas #10*, *supra*.; see *People v. Gabriel* (1943) 57 Cal.App.2d 788.)

On appeal, appellant argues that it did not purchase a business from Fady. Appellant contends that the "Bill of Sale for Business Assets" was not a true contract because the business was not worth anything. Instead, appellant explains that this document was generated as a means to transfer the lease of real property from Fady to appellant pursuant to the City of Norwalk's zoning rules. In support of this argument, appellant provided a single page handwritten letter dated March 29, 2022, addressed "to whom to be concern [(sic),]" and purportedly from F. Metri, Fady's owner, stating that he was "giving over" the business to appellant, who was taking over the lease. Appellant also provided a copy of the City of Norwalk's zoning rules, a Conditional Use Permit Narrative Questionnaire, and a Development Application to support appellant's position.

With respect to the letter from F. Metri, there is no affirmative statement that Fady did not accept any consideration from appellant. Instead, the letter states that F. Metri was "giving over the business" to appellant, which supports the finding that appellant purchased Fady's business. In juxtaposition to appellant's argument, appellant reported to CDTFA that it purchased the business when appellant filed its seller's permit application with CDTFA. Furthermore, appellant's argument is not supported by the documentary evidence in the record. Specifically, the "Bill of Sale for Business Assets," which was signed by both parties, indicates that appellant purchased the business from Fady. Therefore, OTA concludes that appellant fails to support its argument by a preponderance of the evidence.

With respect to the remaining pieces of evidence that appellant provided on appeal, these documents do not establish that appellant did not purchase Fady's business. The zoning regulations, the City of Norwalk's questionnaire, and the City of Norwalk's development application do not contradict the "Bill of Sale for Business Assets" or appellant's seller's permit application. In conclusion, appellant purchased the business from Fady for $9,410 but did not request a certificate from CDTFA or withhold any of the purchase price for Fady's unpaid sales tax liability. Accordingly, OTA finds appellant is liable as a successor for Fady's unpaid sales tax liability up to the purchase price of the business.

HOLDING

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

DISPOSITION

CDTFA's action is sustained.

Signed by:
Kim Wilson
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Kim Wilson
Hearing Officer

We concur:

DocuSigned by:
Steven Kim
5DD7EF644397430...
Steven Kim
Administrative Law Judge

DocuSigned by:
8A4294817A67463...
Andrew Wong
Administrative Law Judge

Date Issued: 5/22/2026