

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 231114787
P. FAHEY,)
TRANSFEEE OF RED BRANCH RANCH, LLC)
_____)

OPINION

Representing the Parties:

For Appellant: Sandeep Singh, Attorney

For Respondent: Paul L. Kim, Attorney

For Office of Tax Appeals: Michelle Huh, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Fahey (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing that he is liable as transferee for additional tax of \$62,246, a late filing penalty of \$15,361.50, an underpayment of estimated tax penalty of \$1,583.32, a collection cost recovery fee of \$322, and applicable interest due from Red Branch Ranch, LLC (RBR) for the 2017 tax year.

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).

ISSUE¹

Whether appellant is liable as transferee for the unpaid taxes, penalties, fee, and interest of RBR.

FACTUAL FINDINGS

1. RBR was a single-member California limited liability company (LLC) formed by appellant on August 13, 2014. Effective January 1, 2017, RBR elected to be classified as a

¹ Because OTA decides below that FTB fails to establish that appellant is liable as transferee for RBR's unpaid taxes, the penalties, fees, and interest are not discussed further. (See *Commissioner v. Stern* (1958) 357 U.S. 39.)

- corporation for federal and California income tax purposes.² RBR was in the business of the cultivation, brokerage, and sale of cannabis products.
2. On April 15, 2017, FTB received a payment of \$800 from RBR.
 3. On October 14, 2019, RBR untimely filed a Form 100, California Corporation Franchise or Income Tax Return, for the 2017 tax year, which reported a tax liability of \$62,246 and a late filing penalty of \$15,562, plus interest, for a total amount due of \$83,523. On October 15, 2019, FTB received three payments from RBR totaling \$423.10.
 4. RBR's 2017 Schedule F, Computation of Net Income, reported gross receipts or gross sales of \$5,559,772. RBR's 2017 Schedule L, Balance Sheet, as of the end of the 2017 tax year, reported cash of \$178,824, total assets of \$1,942,237, and no current liabilities.
 5. RBR reported that appellant was its sole shareholder and officer on the 2017 Form 100. A statement to RBR's 2017 Schedule V, Costs of Goods Sold, reported that RBR paid appellant consulting fees of \$200,000.
 6. On September 23, 2023, FTB issued appellant a Notice of Proposed Assessment (NPA), as transferee of RBR. The NPA applied total payments of \$1,223.10 (\$800 + \$423.10), and proposed to assess additional tax, the late filing penalty and the underpayment of estimated tax penalty, and a cost collection fee, plus interest.
 7. Appellant protested the NPA.
 8. On October 31, 2023, FTB issued a Notice of Action (NOA) to appellant affirming the NPA. The NOA states that "[o]ur records show that [appellant is] a member. As such, [appellant is] liable for the obligations of the [LLC]. . . ."
 9. This timely appeal followed. On appeal, FTB provides RBR's 2018 Form 100. FTB provides an Information Document Request (IDR) it issued to appellant, which requested additional information regarding: (1) RBR's sale of property reported on the 2018 Form 100; (2) RBR's 2017 and 2018 finances; (3) RBR's expenses claimed on the 2017 and 2018 Forms 100, including an accounting of the consulting fees RBR paid to appellant; and (4) RBR's assets. On appeal, FTB provides appellant's IDR response.
 10. On appeal, appellant provides his declaration regarding RBR's formation, activities, and cash position, and appellant's activities as officer. Appellant also provides copies of appellant's joint 2017 federal and California income tax returns, which show that appellant's sole income was business income of \$200,000 as a brokerage and cultivation consultant, and that appellant paid self-employment tax on the income.

² The IRS approved RBR's entity classification election on September 30, 2019.

DISCUSSION

RBR, a single-member LLC, elected to be taxed as a corporation. Single-member LLCs may elect to be treated as a corporation. Upon such an election, the LLC is taxed as a separate entity from its owner. (*Bunzl Distribution USA, Inc. v. FTB* (2018) 27 Cal.App.5th 986, 993.) Here, RBR was liable for the tax, penalties, and interest associated with its 2017 Form 100.

In California, one's status as a member or manager of an LLC³ does not, in and of itself, cause one to be liable for the LLC's debts. (See Corp. Code, § 17703.04(a)(2) & (b).) The general rule in California is that members of an LLC are not liable for the debts, obligations, or other liabilities of the LLC. (*CB Richard Ellis, Inc. v. Terra Nosta Consultants, et al.* (2014) 230 Cal.App.4th 405.)

FTB contends that appellant is "secondarily liable" as "transferee" for the unpaid taxes, penalties, fee, and interest due from RBR pursuant to R&TC sections 19071 through 19074. The transferee liability procedures set forth in these R&TC sections (in particular, R&TC 19073) are substantially similar to those found in Internal Revenue Code (IRC) section 6901. Accordingly, federal authorities interpreting IRC section 6901 are relevant and persuasive in interpreting and applying R&TC sections 19071 through 19074. (See generally *Wertin v. Franchise Tax Board* (1998) 68 Cal.App.4th 961 [where California tax statute uses same language as federal statute, federal case law is persuasive]; see also *Franchise Tax Bd. v. Superior Court* (2013) 221 Cal.App.4th 647, 771, fn. 11.)

The liability of a transferee does not involve the imposition of a new tax liability but provides a means to enforce an existing liability against a person that is a transferee of a taxpayer. (See *Commissioner v. Stern* (1958) 357 U.S. 39, 43-44.) In determining the liability of a transferee for the tax obligations owed by a transferor, the law of the state where the transfer occurred governs. (*Id.* at pp. 44-45.) The parties do not dispute that California law applies in determining transferee liability, and therefore, OTA will apply California law.

The liability of a transferee may be enforced either at law or in equity. FTB does not argue that appellant expressly assumed the liabilities of RBR or is otherwise liable at law, therefore, appellant's liability must be established in equity. Transferee liability in equity is based on the law of fraudulent conveyances. California applies the Uniform Voidable Transactions Act (UVTA), which is codified in Civil Code section 3439 through 3439.14, for transfers made or obligations incurred on or after January 1, 2016. (Stats. 2015, ch. 44, S.B. 161.) Under the UVTA, FTB is considered the creditor of RBR's unpaid tax liability,

³ RBR is an LLC but elected to be a C corporation for federal and California income tax purposes.

because FTB had a right to payment of the liability, and RBR is considered the debtor, because RBR was liable for the tax. (See Civ. Code, § 3439.01(c) & (e) [defining creditor and debtor].)

FTB does not argue that appellant had actual intent to hinder, delay, or defraud FTB. (See Civ. Code, § 3439.04(a)(1).) As applicable here, the UVTA provides that a transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either: (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (B) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due. (Civ. Code, § 3439.04(a)(2).)

To establish transferee liability in equity, FTB must prove five elements: (1) the taxpayer-transferor made a transfer (or incurred an obligation) to the transferee without receiving a reasonably equivalent value in exchange for the transfer or obligation; (2) at the time of the transfer or obligation and at the time transferee liability is asserted, the taxpayer-transferor was liable for the tax; (3) the transfer or obligation was made after the liability for the tax accrued, whether or not the tax was actually assessed at the time of the transfer; (4) the taxpayer-transferor was insolvent at the time of the transfer or obligation, or the transfer or obligation left the taxpayer-transferor insolvent; and (5) FTB has exhausted all reasonable remedies against the taxpayer-transferor. (See *Appeal of Zubkoff and Potash, Assumers and/or Transferees of Ralite Lamp Corporation* (90-SBE-004) 1990 WL 117932 (*Zubkoff*);⁴ Civ. Code, § 3439.04(a)(2).) FTB must prove transferee liability by a preponderance of the evidence. (See *Zubkoff, supra*; Civ. Code, § 3439.04(c).) Unsupported assertions are insufficient to meet a party's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057.)

It is undisputed that RBR paid consulting fees of \$200,000 to appellant in 2017. A transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money. (Civ. Code, § 3439.01(m).) Therefore, RBR's payment of the consulting fees to appellant constitute a transfer to appellant.

⁴ *Zubkoff, supra*, applied law which preceded the Uniform Fraudulent Transfer Act (UFTA) enacted in 1986. (Stats. 1986, ch. 383, § 2.) The UFTA was later amended and renamed as the UVTA. Appellant argues that *Zubkoff* is inapplicable to R&TC section 19071 through 19074 because it cites to "wholly different statutes [including] R&TC" section 25701(a). However, R&TC section 19073 is derived from 25701a, and therefore, *Zubkoff* is applicable authority. (Stats. 1993, c. 31 (S.B.3).)

FTB asserts that, because appellant failed to provide supporting documentation “apart from tax reporting” to substantiate whether appellant provided services worth \$200,000 to RBR, FTB properly determined that RBR transferred property to appellant “for less than full consideration.” As described above, the applicable standard is whether the debtor made the transfer without receiving “a reasonably equivalent value in exchange for the transfer,” in addition to other requirements. (See *Zubkoff, supra*; Civ. Code, § 3439.04(a)(2).) Reasonably equivalent value is the value of the property on the date of the transfer from the perspective of the creditors. (*In re JTS Corp.* (9th Cir. 2010) 617 F.3d 1102, 1109.)

Appellant contends that the fee was compensation for appellant’s services and provides a declaration on appeal that explains the nature of his services to RBR. The declaration states:

At all times since its formation, I was the only officer and employee of RBR. The business purpose of RBR was the cultivation and sale of cannabis products. In my capacity as RBR’s sole manager/employee, I helped grow and cultivate cannabis products, processed and packaged cannabis product, and made arrangements for its sale in wholesale transactions. In 2017, no one provided any services for RBR other than me. I was paid \$200,000 by RBR as compensation for my services . . . [t]his was my only income in 2017.⁵

OTA finds appellant’s declaration to be credible evidence of the services he provided to RBR, and that the declaration is supported by the record. The record shows that RBR was a single-member LLC which reported gross receipts or gross sales of \$5,559,772, and net income of \$704,137 for the 2017 tax year. The record also shows that appellant was RBR’s sole shareholder and officer and that RBR had no employees or other officers in 2017. Finally, the record shows that appellant reported that his only income was compensation from RBR and he paid self-employment tax on the income. Together, the record supports that appellant was responsible for RBR’s operations through his services, consistent with appellant’s declaration. Thus, the record supports that RBR paid appellant for services to RBR, and that RBR received a reasonably equivalent value in exchange for the payment.

FTB provides no evidence to show that RBR made a transfer without receiving a reasonably equivalent value in exchange for the transfer.⁶ Therefore, FTB fails to establish

⁵ Appellant claims he provided services as an employee of RBR but reported zero wage income; instead, appellant reported business income as a consultant. RBR reported no officer compensation and reported the consulting fees as a cost of goods sold deduction, not income for which RBR would be liable to pay tax. FTB has not proposed to disallow the deduction.

⁶ FTB supports its determination that when RBR paid appellant consulting fees, it made a transfer without receiving reasonably equivalent value for the transfer by citing appellant’s claim that he filed late returns because he was recovering from a medical condition. Appellant’s late filing is not at issue, and no evidence in the record supports the conclusion that appellant did not provide any consulting services.

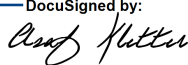
transferee liability in equity. Accordingly, it is unnecessary to discuss the remaining tests to establish transferee liability in equity.⁷

HOLDING

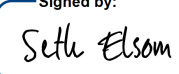
Appellant is not liable as transferee for the unpaid taxes, penalties, fee, and interest of RBR.

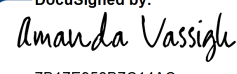
DISPOSITION

FTB's action is reversed.

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Asaf Kletter
Administrative Law Judge

We concur:

Signed by:

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Seth Elsom
Hearing Officer

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Amanda Vassigh
Administrative Law Judge

Date Issued: 8/11/2026

⁷ FTB has not shown that the other elements of transferee liability in equity under California law are met. At the time of the transfer, RBR was not liable for the tax, because RBR paid the consulting fees of \$200,000 in 2017, but was liable for tax on its earnings on April 15, 2018, after the transfer. (See R&TC, § 18601). Accordingly, the transfer was made *before* the liability for the tax accrued. FTB has not shown that RBR was insolvent at the time of the transfer. The burden of proving insolvency is on the creditors, and generally solvency and not insolvency is presumed. (*Stearns v. Los Angeles City School Dist.* (1966) 244 Cal.App.2d 696, 737.) To overcome the presumption of solvency, there must be "some basis in evidence for determining that the amount of the debtor's obligations exceeded" the value of assets." (*Miller v. Keegan* (1949) 92 Cal.App.2d 846, 852.) The tax liability at issue is the only unpaid obligation and RBR's 2017 and 2018 federal balance sheets show assets significantly exceeding current liabilities. FTB fails to provide evidence of its collection attempts against RBR, and therefore fails to show that it exhausted all reasonable remedies.