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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **G. SANDER**	OTA Case No.: 250622386 CDTFA Case ID: 5-147-694

OPINION

Representing the Parties:

For Appellant: Graham Hoad, Representative

For Respondent: Sunny Paley, Attorney

For Office of Tax Appeals: Erica Parker, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, G. Sander (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying in part appellant's timely petition for redetermination of a Notice of Dual Determination (NODD) issued on July 31, 2023.[1] The NODD is for tax of $1,241,744.46, plus applicable interest, and penalties of $404,292.13 for the period January 1, 2009, through February 3, 2020 (liability period) and reflects CDFTA's determination that appellant is personally liable for the unpaid tax liabilities of GHS Holdings, Inc. (GHS) for the liability period pursuant to R&TC section 6829.[2] As explained below, CDTFA subsequently performed a reaudit and reduced the tax liability by $60,990.49 and penalties by $21,346.62.

[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] Penalties totaling $404,292.13 consist of the following: a fraud penalty of $276,917.45 for the liability period; a finality penalty of $110,767 for the period January 1, 2009, through December 31, 2015 (a finality penalty applies in the case of a failure to timely pay a determination); a failure to pay penalty of $14,020.40 for self-assessed tax for 2015 through the first quarter of 2019 (1Q19); a failure to pay penalty of $1,293.64 for department-assessed tax for the period 2Q19 through February 3, 2020, and a failure to file penalty of $1,293.64 for the period 2Q19 through February 3, 2020.

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

Is appellant personally liable as a responsible person for GHS's unpaid tax liabilities?

FACTUAL FINDINGS

1. GHS was a California corporation doing business as Office Furniture Outlet, which operated office furniture and furnishings stores in California.
2. On October 14, 2020, CDTFA contacted appellant, and appellant informed CDTFA that GHS terminated operations on February 3, 2020. Based on this conversation, CFDTA closed GHS's seller's permit effective February 3, 2020.
3. GHS's Statements of Information (SOIs) filed with the Secretary of State (SOS) on April 29, 2015, and June 11, 2018, respectively, list appellant as the CEO, Secretary, CFO, and its sole director.
4. Appellant signed a Power of Attorney (POA), as the president of GHS, appointing GHS's controller to represent GHS in its sales and use tax matters with CDTFA.
5. Appellant prepared and filed GHS's sales and use tax returns (SUTRs) for 2015 through the first quarter of 2019 (1Q19).[3]
6. During an interview with CDTFA, GHS's controller stated that appellant reviewed and signed all SUTRs and approved all check payments for the business.
7. During an interview with CDTFA, appellant admitted that he "probably told [GHS's controller] don't report [the tax] since I don't have the money to pay it."
8. During a telephone conversation on November 13, 2019, appellant discussed GHS's delinquent taxes and SUTRs with CDTFA.
9. During a telephone conversation with CDTFA on January 7, 2020, GHS's controller identified appellant as the only person in charge of GHS's financial matters.
10. GHS's sales receipts show that GHS separately stated and collected sales tax reimbursement on its taxable sales.
11. When interviewed by CDTFA, upon execution of a search warrant, appellant stated to an investigator that he would report the taxable sales from then on, and thereafter, GHS's

[3] There is a discrepancy in the record about the preparation of some of the returns, but it is clear that appellant filed the SUTRs even if GHS's controller prepared them.

SUTRs filed for 4Q17 through 3Q18 show deductions for sales tax reimbursement included in gross sales.

12. A former employee of GHS completed a Business Operations Questionnaire (BOQ) that stated GHS charged sales tax reimbursement as a separate line item on receipts or invoices. The former employee also identified appellant as the person authorized to sign business checks.
13. GHS paid wages to employees totaling $683,943.15 for the period 4Q17 through 1Q20.
14. GHS made payments totaling $177,206.08 to one of its suppliers during the period 3Q16 through 4Q19.
15. At the time of termination of operations, GHS had unpaid sales tax liabilities due to the following: (1) a determination based on an audit conducted by CDTFA for 1Q09 through 4Q15; (2) self-assessed taxes reported on SUTRs filed by GHS for 2016, and 1Q17 through 1Q19; and (3) compliance-assessed taxes based on estimates made by CDTFA for the periods 2Q19 through 4Q19, and January 1, 2020, through February 3, 2020.
16. As relevant here, the unpaid sales tax liabilities from the audit conducted by CDTFA for 1Q09 through 4Q15 included a measure for disallowed claimed nontaxable delivery and/or installation charges of $709,351.
17. On July 31, 2023, CDTFA issued an NODD to appellant holding him personally responsible for GHS's unpaid tax of $1,241,744.46, plus accrued interest, and penalties of $404,292.13.
18. Appellant filed a timely petition for redetermination.
19. On May 2, 2025, CDTFA issued a Decision ordering a reaudit to remove the measure of disallowed claimed nontaxable delivery and/or installation charges. CDTFA performed a reaudit and reduced tax by $60,990.49 and related penalties by $21,346.62.
20. Appellant timely filed this appeal.

DISCUSSION

R&TC section 6829 provides that a person is personally liable for the tax, penalties, and interest owed by a business entity, here a corporation, if all the following elements are met: (1) the corporation has been terminated, dissolved, or abandoned; (2) the corporation collected sales tax reimbursement on its sales of tangible property and failed to remit such tax reimbursement to CDTFA or consumed tangible personal property and failed to pay the applicable tax to the seller or CDTFA; (3) the person had control or supervision of, or was charged with the responsibility for, the filing of returns or the payment of tax, or was under a

duty to act for the corporation in complying with the Sales and Use Tax Law; and (4) the person willfully failed to pay taxes due from the corporation 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 the elements of R&TC section 6829 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 Treyzon*, 2023-OTA-399P.)

Termination

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

CDTFA provides evidence that on October 14, 2020, CDTFA contacted appellant through its compliance activity, and appellant informed CDTFA that GHS closed as of February 3, 2020. Based on that information, CDTFA closed GHS's seller's permit with a closeout date of February 3, 2020. OTA finds that GHS terminated on February 3, 2020. This element is met.

Collection of Sales Tax Reimbursement

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

The record contains the following evidence: (1) copies of GHS's sales invoices showing that sales tax was separately charged and added to the total sales price of tangible personal property; (2) GHS's SUTRs filed for 4Q17 through 3Q18 report deductions for sales tax reimbursement included in gross sales; and (3) a copy of the BOQ completed by a former GHS employee states that GHS charged sales tax reimbursement as a separate line item on the receipts or invoices. OTA concludes that the evidence in the record shows that GHS collected sales tax reimbursement from its customers on the sale of tangible personal property, which it did not remit to CDTFA. This element is met.

Responsible Person

Personal liability can be imposed only 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 returns or the payment of tax or who had a duty to act for the corporation in complying with any provision of the Sales and Use Tax Law when, as relevant

here, the business sold tangible personal property and collected sales tax reimbursement on the selling price of the property and failed to remit such tax reimbursement when due. (R&TC, § 6829(b); Cal. Code Regs., tit. 18, § 1702.5(b)(1).) Simply because a person was an officer, member, manager, employee, director, shareholder, or partner of a business is not, in and of itself, sufficient to establish that the person is a "responsible person." (Cal. Code Regs., tit.18, § 1702.5(b)(1).) As relevant here, personal liability applies only if the person was a responsible person for the corporation and the corporation 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. (See Cal. Code Regs., tit. 18, § 1702.5(a).)

Here, the record shows that appellant was a responsible person based on the following: (1) appellant prepared and filed GHS's SUTRs for the periods 2015, 2016, and 1Q17 through 1Q19; (2) GHS's SOIs filed with the SOS on April 29, 2015, and on June 11, 2018, identify appellant as the CEO, Secretary, and CFO; (3) as president of GHS, appellant signed a POA appointing GHS's controller to represent GHS in discussions with CDTFA of its sales and use tax matters; and (4) in a telephone conversation on January 7, 2020, GHS's controller identified appellant as the only person in charge of GHS's financial matters. OTA concludes the evidence in the record shows appellant was a person responsible for GHS's sales and use tax matters. This element is met.

Willfulness

"Willfully fails to pay or cause to be paid" means that the failure to pay 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).) This failure may be willful even if it was not done with a bad purpose or motive. (Cal. Code Reg., tit. 18, § 1702.5(b)(2).)

A person is regarded as having willfully failed to pay taxes, or willfully failed to cause the taxes to be paid, where he or she had actual knowledge that the taxes were not being paid; had the authority to pay the taxes, or to cause them to be paid, on the date the taxes became due and when the person had knowledge; and had the ability to pay the taxes when the person had knowledge, but chose not to do so. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(A)-(C); *Appeal of Eichler*, 2022-OTA-029P.)

Knowledge

The first requirement for willfulness is that the individual had actual knowledge that the taxes were due, but not being paid. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(A).)

Here, the record establishes the following: (1) appellant discussed the delinquent taxes and SUTRs with CDTFA during a telephone conversation on November 13, 2019; (2) during an interview with CDTFA on October 28, 2015, appellant admitted to knowingly misstating GHS's taxable sales on its SUTRs; (3) during a telephone conversation with CDTFA on January 7, 2020, GHS's controller identified appellant as the only person in charge of GHS's financial matters; and (4) appellant filed SUTRs during the liability period but did not remit payment.

OTA concludes that the evidence establishes that on or after the date the taxes became due, appellant had actual knowledge that the taxes were due but not paid.

Authority

The second requirement for willfulness is that the responsible person had authority to pay the taxes or to cause them to be paid: (i) on the date that the taxes came due; and (ii) when the responsible person had actual knowledge. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(B).)

The record shows the following: (1) GHS's former employee identified appellant as the person authorized to sign GHS's business checks; (2) appellant prepared and e-filed GHS's SUTRs for the periods 2015, 2016, and 1Q17 through 1Q19; (3) GHS's SOI forms filed with the SOS on April 29, 2015, and June 11, 2018, respectively, listed appellant as the CEO, Secretary, and CFO; (4) appellant signed the POA appointing GHS's controller to represent GHS in its sales and use tax matters with CDTFA; and (5) according to GHS's controller, appellant reviewed and signed all of GHS's SUTRs and approved all business checks.

OTA concludes that the evidence establishes appellant had the authority to pay the taxes or cause them to be paid.

Ability to Pay

The third requirement is that when the individual had actual knowledge, the individual had the ability to pay the taxes but chose not to do so. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(C).)

The evidence demonstrates the following: (1) GHS collected sales tax reimbursement; (2) GHS paid wages to employees totaling $683,943.15 during the period 4Q17 through 1Q20; and (3) GHS made payments totaling $177,206.08 to just one of its suppliers during the period 3Q16 through 4Q19.

OTA concludes that the evidence establishes that GHS had funds available to pay the taxes, but appellant elected not to do so. Appellant had actual knowledge that GHS's taxes

were not being paid, had the authority to pay the taxes, or to cause them to be paid, on the date the taxes were due, and had the ability to pay the taxes when he had knowledge, but chose not to do so. The element of willfulness is met.

Based on the foregoing, CDTFA has established that appellant was a person responsible for GHS's unpaid tax liabilities, and appellant does not dispute this. Rather, on appeal, appellant's sole contention is that CDTFA served the NODD after expiration of the statute of limitations. Appellant alleges, without evidence, that CDTFA had actual knowledge prior to July 1, 2020, that GHS had terminated.

An NODD issued under R&TC section 6829 must be mailed within three years after the last day of the calendar month following the quarterly period in which CDTFA obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative of the termination, dissolution or abandonment of the business of the corporation, or within eight years after the last day of the calendar month following the quarterly period in which the corporation's business was terminated, dissolved, or abandoned, whichever period expires earlier. (R&TC, § 6829(f); Cal. Code Regs., tit. 18, § 1702.5(c)(2).) Termination of the business of a corporation includes discontinuance or cessation of all business activities for which the corporation was required to hold a seller's permit. (Cal. Code Regs., tit. 18, § 1702.5(b)(3).)

Here, the record shows that on October 14, 2020, CDTFA contacted appellant through its compliance activity, and appellant informed CDTFA that GHS closed as of February 3, 2020. Based on that information, CDTFA closed GHS's seller's permit with a closeout date of February 3, 2020. As such, OTA finds that CDTFA received actual knowledge of GHS's termination on October 14, 2020. Therefore, three years from the last day of the calendar month following the quarter (i.e., 4Q20) in which CDTFA obtained actual knowledge of the business termination is January 31, 2024.

As noted above, appellant does not specify what date he claims CDTFA obtained actual knowledge, nor does appellant provide any evidence that CDTFA obtained actual knowledge prior to the October 14, 2020, date established in the record. Moreover, appellant raised the same contention at CDTFA's Appeals Bureau conference, where appellant admitted no factual evidence exists to support appellant's contention.

OTA finds that CDTFA timely issued the NODD to appellant on July 28, 2023, prior to the January 31, 2024 statute of limitations expiration date per R&TC section 6829(f). Additionally, OTA finds that appellant's argument is frivolous. Further attempts by appellant to

raise this argument could result in the imposition of sanctions. (See Cal. Code Regs., tit. 18, § 30213.5.)

HOLDING

Appellant is personally liable as a responsible person for GHS's unpaid tax liabilities.

DISPOSITION

CDTFA's action to reduce the tax by $60,986 and penalties by $21,346.62 but otherwise deny appellant's petition is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

Signed by:
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Kim Wilson
Hearing Officer

Signed by:
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Natasha Ralston
Administrative Law Judge

Date Issued: 8/19/2026