

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**THIRTY 3 SIXTY 3 LLC** :  
for Revision of a Determination or for Refund of Sales and :  
Use Taxes under Articles 28 and 29 of the Tax Law for :  
the Period June 1, 2014 through February 28, 2017. :

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DETERMINATION  
DTA NOS. 829423  
AND 829424

In the Matter of the Petition :  
of :  
**JACQUELINE ACEVEDO VILLANUEVA** :  
for Revision of a Determination or for Refund of Sales and :  
Use Taxes under Articles 28 and 29 of the Tax Law for :  
the Period June 1, 2015 through February 28, 2017. :

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Petitioner, Thirty 3 Sixty 3 LLC, filed a petition for revision of a determination or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the period June 1, 2014 through February 28, 2017.

Petitioner, Jacqueline Acevedo Villanueva, filed a petition for revision of a determination or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the period June 1, 2015 through February 28, 2017.

A consolidated hearing was held in Brooklyn, New York, before Kevin R. Law, Administrative Law Judge, on December 13, 2022, and continued to completion on April 11, 2024, with all briefs to be submitted by October 29, 2024, which date commenced the six-month period for the issuance of this determination. Petitioners appeared by Thomas F. DiLullo, P.C.

(Thomas F. DiLullo, Esq. and Nicholas Kokis, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Brandon Batch, Esq., of counsel).

### ***ISSUE***

Whether petitioner Jacqueline Acevedo Villaneuva was a responsible person of Thirty 3 Sixty 3 LLC for the period June 1, 2015 through February 28, 2017.

### ***FINDINGS OF FACT***

1. The Division of Taxation (Division) conducted a sales and use tax audit of petitioner, Thirty 3 Sixty 3 LLC (LLC), for the period June 1, 2014 through November 30, 2017 (the audit period).

2. On January 30, 2013, petitioner, Jacqueline Acevedo Villanueva,<sup>1</sup> filed form DTF-17, application to register for a sales tax certificate of authority, that indicated that she was a responsible person for the collection and payment of sales tax on behalf of the LLC. On form DTF-17, petitioner indicated her title as “President” and provided her email address. From March 11, 2014 until February 28, 2015, the LLC operated a restaurant located at 3363 E. Tremont Ave., Bronx, New York (the premises), called Siete Ocho Siete. Starting sometime thereafter, the LLC was doing business as Made in Puerto Rico Latin Cuisine and Sports Bar (Made in Puerto Rico). Prior to March 11, 2014, petitioner operated a restaurant called Thirty 3 Sixty 3 Steakhouse at that location.

3. During the audit, the LLC and petitioner were represented by accountant Salvatore Merante. Petitioner signed powers of attorney on behalf of the LLC and herself authorizing such representation. Petitioner signed the power of attorney authorizing Mr. Merante’s representation

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<sup>1</sup> Unless otherwise indicated, all references to petitioner are to Jacqueline Acevedo Villanueva, while references to petitioners are to Jacqueline Acevedo Villanueva and the LLC.

of the LLC as “Member/Manager” on February 16, 2016. In addition, during the audit, petitioner signed consents extending the statute of limitations within which to assess tax.

4. On September 19, 2017, the auditor called Mr. Merante to discuss the audit. It was revealed at that time that the LLC did not keep or maintain a general ledger or trial balance. When the auditor questioned Mr. Merante about the nontaxable sales claimed on the LLC’s sales tax filings, Mr. Merante responded that those sales were for catered events. At that point, the auditor informed Mr. Merante that catered sales were taxable and requested any tax exemption documents. Also, during that call, Mr. Merante indicated that bank statements would be provided for the audit period and an initial conference was scheduled.

5. On or about January 24, 2018, the Division’s auditor spoke with petitioner who requested a postponement of an upcoming audit appointment because petitioners had retained a new representative, and the prior representative had not transferred all the records to her. On February 1, 2018, the Division’s auditor emailed his supervisor advising her that petitioners postponed the upcoming audit appointment, and that petitioner had also advised him the restaurant had ceased operation in May 2017.

6. On February 2, 2018, the Division performed a survey of the restaurant. The restaurant was doing business as Made in Puerto Rico and served both food and alcoholic beverages.

7. Because the auditor confirmed that reported gross sales were more than the credit card sales per the merchant card reports that he reviewed, the LLC’s reported gross sales on its sales tax returns were accepted as filed.

8. Subsequently, on March 30, 2018, petitioner claimed that she had sold the LLC on March 9, 2015. At a meeting with the auditor, petitioner and her husband, John Villanueva,

initially stated they did not have a contract to document the alleged sale of the LLC but, at the end of the meeting, Mr. Villanueva acknowledged that there was a contract.

9. On July 5, 2018, petitioner presented a one-page contract signed by her and purportedly by the purchaser of the LLC, Jose Torres, which indicated that Mr. Torres purchased the LLC for \$75,000.00. The one-page document is dated March 4, 2015, and reads as follows:

“Thirty3 Sixty3 LLC  
D.B.A. SIETE OCHO SIETE  
CONTRACT

Sales Price	\$75,000 - 100% of Company/Corporation
Initial Down Payment	\$75,000 - Due upon and acceptance and execution of this agreement.
Balance	\$0
Remaining Balance	\$0

This agreement validates that all monies received are nonrefundable.”

10. Petitioner also presented a document titled “BILL OF SALE” that stated as follows:

“On this 9th day of March, 2015 Jacqueline Acevedo relinquishes all of her interest in Thirty3Sixty3 LLC to Jose Torres for the sum of Seventy-Five Thousand Dollars (\$75,000.00).

Jose Torres agrees to and assumes complete control of the LLC and total responsibility for all existing bills of the LLC and restaurant from this date forward and will indemnify and hold Jacqueline Acevedo harmless from any claims arising out of same.”

This document was signed by petitioner and purports to have been signed by Jose Torres. Mr. Torres’ signature is identical to the signature appearing on the alleged contract.

11. The Division’s auditor questioned the authenticity of the alleged contract; specifically, the Division questioned why it was not notarized and why it lacked language one would expect to see in a transfer of a limited liability company. Subsequently, petitioner proffered another document entitled “Bill of Sale” wherein petitioner indicated that she

transferred the LLC to Mr. Torres on March 9, 2015. This document was signed by petitioner and notarized on February 6, 2019. The auditors gave this document no credence.

12. On March 5, 2019, the Division issued to the LLC, a notice of determination, assessment number L-049513097, asserting sales tax of \$223,738.03 plus interest and penalties for the period June 1, 2014 through February 28, 2017. The tax asserted due is based upon the disallowance of the claimed nontaxable sales reported on its sales tax returns because exemption documents were never provided to the auditors during the audit.

13. On March 6, 2019, the Division issued to petitioner a notice of determination, assessment number L-049515451, asserting sales tax of \$195,082.34 plus interest and penalties for the period June 1, 2015 through February 28, 2017, as a responsible person of the LLC for the sales and use taxes due on behalf of the LLC.

14. The Division determined that petitioner was a responsible person for the LLC for the following reasons: she signed the federal partnership returns for 2015 and 2016;<sup>2</sup> third party reports indicated that the LLC made purchases of liquor using her liquor license; she signed form DTF-17; and a COA renewal was issued to her on September 29, 2016. In addition, the LLC filed its final sales tax return, dated June 20, 2017, using her home address. It is noted that all but one of the sales tax returns were filed electronically and listed petitioner as the filer and listed her personal email address. The federal partnership returns indicated that petitioner owned 99% of the LLC in both 2015 and 2016. The federal partnership returns list Athena Hernandez as a 1% owner in 2015, and petitioner's husband, Mr. Villanueva, as a 1% owner in 2016.

15. On June 3, 2019, following issuance of the notices of determination, petitioners filed petitions with the Division of Tax Appeals protesting the respective notices.

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<sup>2</sup> It is noted that the returns contained in the Division's audit file do not contain a physical signature.

### *PROCEDURAL HISTORY*

16. Before these matters were scheduled for hearing, the Division filed motions seeking summary determination in its favor and petitioners responded with cross-motions seeking judgment in their favor. By order, dated July 14, 2022, the Division's motion seeking summary determination in its favor as to the LLC was granted but denied as to that part of the motion seeking summary determination in its favor as to petitioner as well as denying the LLC's cross motion; petitioner's cross-motion seeking judgment in her favor was likewise denied.

17. Summary determination in the Division's favor as to the LLC was granted because the LLC did not challenge the basis for asserting tax against it because it was simply based upon the disallowance of claimed exempt sales and it did not allege any errors on the part of the Division. Instead, the focus of the LLC and petitioner was whether petitioner was a responsible person for the collection and remittance of sales tax on behalf of the LLC during the period in issue. With respect to petitioner, both parties' motions were denied because there existed questions of fact for which a hearing was required. With respect to petitioner, the record contained conflicting proof as to whether petitioner still held her membership interest in the LLC and/or the extent of her involvement with the LLC after the alleged sale.

18. After the hearing had been scheduled, petitioner served subpoenas on Mr. Torres, Ms. Hernandez, Fabricio Alonzo, Cosmo Montemurro and Mr. Merante, commanding their appearance at the December 13, 2022 hearing in these matters, and any adjourned or continued date, to provide testimony as to their involvement with, and knowledge of petitioner's ownership of the LLC, and lease of the premises. All five failed to appear.<sup>3</sup> Subsequently petitioner

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<sup>3</sup> Mr. Torres was also issued a notice of determination by the Division which asserted that he was a responsible person of the LLC for the period June 1, 2016 through February 28, 2017. On December 22, 2022, attorneys Glenn Newman and Steven Bercovitch came to the hearing location to inform the Administrative Law Judge and petitioners' counsel that Mr. Torres had informed them that morning that he would not be appearing. Mr.

brought motions to compel in New York State Supreme Court, Bronx County. By order, dated March 8, 2023, Honorable Leticia Ramirez, JSC, Bronx County, directed the five subpoenaed witnesses to appear and give testimony in the present matter.

19. Following the issuance of Justice Ramirez's order, the hearing was continued on September 25 through September 29, 2023, at the offices of the Division of Tax Appeals in Brooklyn, New York. Of the five subpoenaed witnesses, only Mr. Montemurro complied with Justice Ramirez's order. Thereafter, petitioner brought an order to show cause seeking contempt charges against Mr. Torres, Ms. Hernandez, Mr. Alonso and Mr. Merante. While the order to show cause was denied in its entirety, the four individuals were ordered to appear virtually at the continued hearing and did so at a mutually agreed upon date.

#### *THE HEARING*

20. At the hearing in this matter, petitioner testified as to how she and Mr. Villanueva became involved in the restaurant business. She explained that both felt there were no authentic restaurants serving Puerto Rican cuisine in the Bronx.

21. On September 1, 2012, petitioner signed an agreement to lease the premises from Montemurro Enterprises LLC, c/o Mr. Montemurro. On December 12, 2012, with an effective date of December 11, 2012, petitioner assigned this lease to the LLC. On or about December 12, 2012, petitioner applied for a liquor license, which was subsequently granted.

22. Petitioner and Mr. Villanueva, being new to the restaurant industry, soon ran into financial difficulties and Thirty 3 Sixty 3 Steakhouse could not keep up with its debts. Petitioner brought in a manager, Lucas Batisserie, who had experience in the restaurant industry. Mr.

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Bercovitch handed the Division's counsel a copy of Mr. Torres' request for a conciliation conference which was subsequently entered into evidence over the objection of petitioner. This document included an affidavit of Mr. Torres that stated, in pertinent part, that he only performed in an administrative role for the LLC and was never a manager.

Batiserrie had his own branded restaurant named Siete Ocho Siete, which he was going to operate at the premises through the LLC. On March 11, 2014, petitioner changed the doing business name of the LLC to Siete Ocho Siete. The LLC's bank statements for the period May 2014 through February 28, 2015 indicated that the LLC was doing business as Siete Ocho Siete. According to petitioner, Mr. Batiserrie stole from her and Mr. Villanueva and he was fired.

23. According to petitioner, in March 2015, petitioner and Mr. Villanueva decided to close Siete Ocho Siete and sell the LLC. She averred that they just wanted out of the business and wanted to be done due to all the debt she incurred from operating the restaurants. According to petitioner, she sold the LLC, including the liquor license, to Mr. Torres.<sup>4</sup> Petitioner stated that upon receiving the payment from Mr. Torres, she used it to pay debts. No evidence of payment or receipt was ever provided.

24. Petitioner averred that she and the LLC had been evicted from the premises, as evidenced by a copy of a notice of eviction dated March 18, 2015, for an eviction action commenced by the landlord, Montemurro Enterprises LLC against petitioner d/b/a Thirty 3 Sixty 3 Steakhouse, 3363 East Tremont Avenue, Bronx, New York 10461. In addition, petitioner submitted a notice indicating that the New York City marshal had legal possession of the premises, as of March 31, 2015. Neither the notice of eviction nor the sheriff's possession notice list the LLC as a party.

25. Petitioner further claimed that she had a tumultuous relationship with Mr. Torres. She testified that the day after he allegedly purchased the LLC, Mr. Torres called her and requested that she let him use her liquor license and threatened her family when she expressed an

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<sup>4</sup> A liquor license cannot be transferred to any other person or any other premises except in the discretion of the State Liquor Authority (SLA) (*see* Alcoholic Beverage Control Law §§ 111, 114 [2]), nor may it be pledged or deposited as collateral security (*see* Alcoholic Beverage Control Law § 114 [3]).

unwillingness, but he assured her he would get his own liquor license. Petitioner claims that later she learned that Mr. Torres was a “street guy” with a very bad reputation in the community. Petitioner testified that when creditors called her after she sold the LLC to Mr. Torres, she explained that the LLC was sold to Mr. Torres and these creditors informed her that Mr. Torres was a bad actor and to stay away from him. Petitioner stated that she feared his threats, so she went along with what he instructed her to do. It was not until she found out that she might be liable for the full amount of sales tax due she decided that enough was enough and told her attorney that Mr. Torres threatened her. On her second day of testifying, petitioner alleged Mr. Torres was a drug dealer. The only evidence contained in the record to discredit Mr. Torres, besides petitioner’s testimony that she heard that Mr. Torres was a “street guy,” or a “bad actor,” centers around his ownership of Pompeii Lounge, an establishment known for its raucous crowd. When Mr. Torres found out during his testimony that petitioner stated she felt threatened by him, he seemed surprised. He stated he thought they had a good relationship. It was also revealed that petitioner and Mr. Torres are friends on the social media platform Facebook.

26. Petitioner submitted copies of bank signature cards and bank statements for the LLC’s bank accounts at Chase Bank. Petitioner is not listed as an authorized signatory on these accounts. The bank signature cards listed Mr. Torres as a member of the LLC. Most of the checks issued from these accounts in 2015 and 2016 were signed by Mr. Torres and/or Mr. Alonzo. Petitioner submitted an analysis of the checks including detailed cash withdrawals from the Chase Bank accounts during 2015 and 2016. Of particular interest are cash withdrawals made by Mr. Torres and Mr. Alonzo. Specifically, Mr. Torres and Mr. Alonzo took cash withdrawals from the LLC totaling \$218,444.04 and \$150,853.76, respectively.

27. In addition to the cash withdrawals, there were monthly checks issued to petitioner in 2015 and 2016 totaling \$21,850.00, that petitioner alleged were issued to her and used to fulfill her obligations pursuant to a payment plan with the Division. There were 11 monthly checks issued to petitioner starting on December 14, 2015 and ending on September 13, 2016. Ten of the eleven checks had either “sales tax” or “tax payment” written in the memo line of the respective check. In August 2016, however, petitioner was issued an additional check for \$3,250.00, which had “Isla Verde Cafe Inc/Filing Corp Reg” written in the memo line. No explanation was provided for this discrepancy. Petitioner’s checking account statements showed monthly deposits into her checking account followed by a \$2,000.00 payment to the Division approximately two days later.

28. Petitioner presented the testimony of Mr. Torres<sup>5</sup> who stated that he began working for the LLC sometime in 2015 as manager and reported to petitioner and to Mr. Villanueva. Mr. Torres explained that he was brought in to turn around the business after petitioner attempted to sell it to Mr. Batisserie, but that sale never occurred. He stated that petitioner and Mr. Villanueva were rarely at the premises and petitioner gave him full control to run the restaurant operations at the premises. Mr. Torres explained that with petitioner’s knowledge and consent, he changed the doing business name of the LLC from Siete Ocho Siete to Made in Puerto Rico. The name change application was filed by Dalal Associates CPAs PC and signed by Mr. Torres. The title listed for Mr. Torres is “authorized person.” Mr. Torres admitted that he signed the certificate of assumed name and admitted to using it to open Chase Bank accounts for the LLC. When confronted with the Chase Bank signature cards that indicated he was a member of the LLC, he remained adamant that he was never a member of the LLC stating he was an authorized

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<sup>5</sup> As noted in finding of fact 18, Mr. Torres did not comply with the subpoena nor Justice Ramirez’s first order; but appeared via videoconference after her second order was issued.

signer. Mr. Torres claimed to have no knowledge as to who or why the signature cards changed his status from authorized signer to member of the LLC. Mr. Torres did the hiring and firing, paid vendors and paid employees. When asked multiple times if he was a member of the LLC, he was steadfast in answering that he was never a member.

29. The signatures of Mr. Torres on the contract of sale and bill of sale, that petitioner alleges he signed that allegedly transferred the LLC to him, do not match his signatures on the certificate of assumed name, on the Chase Bank signature cards, or cancelled checks. Likewise, the signature on an application for a certificate of compliance, dated April 20, 2015, does not match the signatures on the Chase Bank signature cards, cancelled checks and the certificate of assumed name.

30. Ms. Hernandez, Jose Torres' wife, was also one of the four witnesses who petitioner called to testify that ignored the subpoena, ignored the subsequent court order compelling her testimony and finally testified by videoconference after a second court order was issued. Ms. Hernandez testified about her relationship with petitioner including averring that she had been hired by petitioner and Mr. Villanueva around the time Mr. Torres had been hired by them. Ms. Hernandez stated that she was a manager of Made in Puerto Rico and had left at the time she and Mr. Torres moved to Florida. Ms. Hernandez stated that she either signed a lease or contract of sale to purchase the restaurant, but did not remember which. Included in the record is a November 1, 2015 lease that Made in PR Latin Cuisine and Sports Bar Corp., signed as lessee, with Montemurro Enterprises, LLC as lessee of the premises. By the terms of this agreement, Montemurro Enterprises, LLC was assigning a September 1, 2012 lease it had for the premises to Made in PR Latin Cuisine and Sports Bar Corp.

31. On September 29, 2015, Ms. Hernandez sent in the 30-day advance notice to the Bronx Community Board #10 that Made in Puerto Rico would be applying for a liquor license at the premises. On November 25, 2015, Bronx Community Board #10 wrote to the SLA as follows:

“At the November 19, 2015, meeting of Bronx Community Board #10, the Board passed a Resolution to not grant the above establishment a liquor license. Our decision was based on several factors, particularly that one of principals of this business, is a gentleman named Jose Torres, aka Jonathan Torres.

For several years, Mr. Torres operated an establishment known as the Pompeii Lounge at 3133 E.Tremont Avenue, a business which is now shuttered. This particular establishment was the bane of our collective community. Its owners had been consistently, violating SLA regulations, as well as the City's Noise Code. There was at least one gun fight at the site which spilled into the street, causing bullet damage to the façade of an adjoining dental office. The management, in the form of Mr. Torres, often utilized the services of promoters, who filled the establishment with people, who were inebriated when they arrived at the site, and engaged in activities that destroyed the quality of life for local residents, some of whom simply moved out of the community.

This Board appeared at several SLA Hearings, as well as our elected officials and community residents, protest the manner in which Pompeii was operated. Neither Mr. Torres, nor anyone in authority at Pompeii, did anything to address these problems. Finally, after several years, your agency levied such significant fines that the doors were closed.

Mr. Torres is simply a bad actor, who does not have the community's interests at heart. His mere association with Made in Puerto Rico is enough for our Board to recommend that a liquor license not be granted to this establishment. Unfortunately, we recently learned that the liquor license was approved by your agency. We genuinely fear that the quality of life that we and others had labored so hard to restore, in the wake of his destruction, will be destroyed again by Mr. Torres and his associates. Therefore, we urge the SLA to rescind the license for Made in Puerto Rico, If this cannot be done, we formally request that this establishment be placed on a watch list.”

32. Ms. Hernandez stated she never formally applied to the SLA for a liquor license due to the Community Board's opposition because of her affiliation with Mr. Torres. Instead, she said that she abandoned the purchase of Made in Puerto Rico from petitioner and, instead,

concentrated on opening a restaurant located at 26 Bruckner Boulevard, Bronx, New York, which was also to be called Made in Puerto Rico Sports Bar and Latin Cuisine. This endeavor proved more successful for Ms. Hernandez than her attempt at procuring a liquor license for the premises. When asked whether she purchased the LLC or part thereof, she stated that she did not.

33. On December 9, 2015, the Community Board sent letters to petitioner and to the SLA reporting that Made in Puerto Rico did not formally apply for a liquor license and was illegally operating under the liquor license held by petitioner who had sold the business. The Community Board requested that petitioner either surrender her liquor license or that it be rescinded.

34. During the time that Ms. Hernandez was operating Made in Puerto Rico, she was admittedly using petitioner's liquor license. When asked, Ms. Hernandez admitted using petitioner's liquor license stating that petitioner allowed it. She further testified that she never purchased the restaurant nor the LLC and could not explain why she was listed as having a 1% membership interest in the LLC.

35. On December 20, 2016, Mr. Alonzo, incorporated MIPR Inc. On that same day the SLA received an application for a liquor license from MIPR Inc. During the application process, MIPR Inc. submitted amongst other things, an assignment and assumption of lease dated May 1, 2017, and allegedly signed by petitioner and an asset purchase agreement dated December 1, 2016, also alleged to have been signed by petitioner.

36. On July 31, 2017, with an effective date of May 19, 2017, the SLA issued a cancellation order to the LLC and to petitioner cancelling her liquor license at the premises. The cancellation order was premised on violations of the Alcoholic Beverage Control Act that

occurred on April 1, 2017, and April 6, 2017, that petitioner pled no contest on behalf of the LLC. Petitioner had appeared before the SLA with a representative and requested that her license not be revoked. Petitioner alleges that her appearance before the SLA as the LLC's principal was the result of being under duress by Mr. Torres. She stated that during the various proceedings before the SLA, Mr. Torres and his lawyers directed her what to say.

37. On September 21, 2017, the liquor license application of MIPR, Inc., was disapproved. In its disapproval, the SLA pointed out that petitioner's signature on the May 1, 2017 assumption of lease and the December 1, 2016 asset purchase agreement did not even remotely resemble petitioner's signature on file with the SLA.

38. The SLA also pointed out discrepancies with regard to who had legal control of the premises and which entity was operating there stating that it was unclear how MIPR Inc. came into possession of the premises and which entity it was obtained from.

39. In a request for reconsideration of the disapproval of its liquor license application, MIPR Inc. submitted an affidavit of petitioner sworn to on November 3, 2017. In her affidavit, petitioner avers that she and the LLC have been the tenant in possession of the restaurant located at 3363 E. Tremont Avenue, Bronx, NY 10461 since she signed the original lease as the tenant on September 1, 2012 with the landlord Montemurro Enterprises, LLC. In this affidavit she states that throughout the summer of 2015, she attempted to sell the restaurant, but this transaction was abandoned. In her affidavit, petitioner states that the questioned signature are hers stating the discrepancy in her signature was the result of injuries sustained during a car accident which had occurred in February 2017. Petitioner specifically states in her affidavit "[t]o be clear, I have been in possession of the premises as the principal of Thirty 3 Sixty 3, LLC at

3363 E. Tremont Avenue, Bronx, NY 10461 from the date of my original lease dated September 1, 2012 to August 10th, 2017—the date of the closing.”

40. Also included in the request for reconsideration, were the affidavits of Cosmo Montemurro, the landlord of the premises, and Mr. Alonzo. These affidavits are consistent with petitioner’s account of what transpired as stated in her affidavit.

41. Petitioner now claims that the signatures on the assignment and assumption of lease and asset purchase agreement are not hers and explains that she was forced to sign the November 3, 2017 affidavit by Mr. Torres. She asserted that she was also forced to provide him medical documentation stemming from a car accident which was used in said affidavit. According to petitioner, he threatened to come down to workplace if she refused to sign the affidavit. She points out the signature on the December 1, 2016 asset purchase agreement could not be the result of the car accident because the accident occurred after the asset purchase agreement was signed. To prove that the asset purchase agreement and the assignment of lease were not signed by her, petitioner presented the testimony, as well as a report, of Bart Baggett. Mr. Baggett was qualified as an expert in forensic document examination. It was Mr. Baggett’s opinion that, based upon his review of petitioner’s known handwriting samples, that the December 1, 2016 asset purchase agreement and the May 1, 2017 assignment of lease were not signed by petitioner. Mr. Baggett testified however, than an individual’s signature could change based on things such as a traumatic brain injury, carpal tunnel syndrome or the use of certain drugs.

42. Mr. Montemurro, principal of Montemurro Enterprise LLC, was subpoenaed by petitioner to give testimony in this matter. He did not comply with petitioner’s original subpoena but did so after Justice Ramirez issued her first order. He claimed to have no recollection of who or what entity was operating out of the premises and, at times appeared to be confused during his

testimony. Upon being shown the notice of eviction, that evicted petitioner d/b/a Thirty 3 Sixty 3 Steakhouse from the premises, he stated that petitioner and the steakhouse were “out” and was adamant that he would not have allowed her to continue operating her business out of the premises if he were forced to go through an eviction proceeding against a tenant. Mr. Montemurro blamed his memory issues on old age. At one point during his testimony, he requested to have his counsel present so he could better answer questions.

43. Petitioner also presented the testimony of Joseph Toppin, an insurance agent with the Richmond Insurance Group in Staten Island, New York. Mr. Toppin testified that he began insuring Made in Puerto Rico starting in, or around, April 2015. It was Mr. Toppin’s understanding that Mr. Torres was the owner of “Made in Puerto Rico/Made in PR.” When Mr. Toppin was asked about a Worker’s Compensation binder issued to Made in PR with an address of 3363 East Tremont Ave, Bronx, dated July 21, 2015, and an insurance policy issued to the LLC for the period January 26, 2018 to January 26, 2019, Mr. Toppin stated that the LLC was not the same as Made in PR.

44. Mr. Merante was also subpoenaed to give testimony at the hearing. Similarly to Mr. Torres and Ms. Hernandez, he did not appear until two orders were issued by Justice Ramirez. At the time of the hearing, he had known Mr. Torres for about 20 years. He was employed by Mr. Torres as an accountant, when Mr. Torres operated the Pompeii Lounge. Mr. Merante’s testimony to specific events and the chronology thereof, and most of the answers to questions posed to him, were elicited from documents presented to him by petitioner’s counsel, not from recollection. Mr. Merante pieced information garnered from those documents to answer questions posed of him explaining that the time was a long time ago. He further explained that his nephew, under his supervision, did most of the accounting work for the LLC, but died about

five years prior to his testifying. He did recall that petitioner owned the LLC during 2015, 2016 and possibly into 2017. He stated that sometime around 2016, Ms. Hernandez, began running the restaurant operations at the premises. While Mr. Merante's memory was generally hazy, he did have a specific recollection of an incident involving petitioner and Mr. Villanueva.

According to Mr. Merante, petitioner admitted that she owed the sales tax that is at the center of this proceeding and had given him a \$1,500.00 deposit to prepare an offer in compromise (the OIC) to submit to the Division. Mr. Merante stated that sometime after petitioner retained him, Mr. Villanueva came to his office and demanded the deposit back. When he refused because he had already started preparing the OIC and had put substantial time in, Mr. Villanueva became irate and threw things in the office and ran off with files that were on his desk. Mr. Merante recounted that Mr. Torres, who had been at Mr. Merante's office, had witnessed this encounter and appeared shocked by Mr. Villanueva's behavior.

45. During his testimony, Mr. Merante was shown a letter that he wrote on behalf of the LLC to the Worker's Compensation Board stating that the restaurant had no payroll between June 15, 2015 and January 26, 2016. A comparison with the LLC's filed sales tax returns for that period, revealed several hundred thousand dollars of sales. Mr. Merante was unable to explain the discrepancy between the reported sales for the period June 15, 2015 and June 6, 2016, while his letter to workers' compensation reported there was no payroll for the same period.

46. Mr. Alonzo was also subpoenaed to appear and give testimony and failed to appear initially. After Justice Ramirez's second order, Mr. Alonzo testified via videoconference. Mr. Alonzo explained that he has known Mr. Torres for about 15 years, stating that they grew up in the same neighborhood. At one point, Mr. Alonzo had worked for Mr. Torres when he owned

the Pompeii Lounge. When Mr. Torres began working for petitioner at Made in Puerto Rico, he brought in Mr. Alonzo to be the bar manager. Mr. Alonzo also had check signing authority. Mr. Alonzo identified petitioner as the owner of the restaurant and stated that she was the one who gave him check signing authority on the Chase Bank accounts. During his testimony, Mr. Alonzo identified Made in Puerto Latin Cuisine as his restaurant stating that he has owned it since January 2018. He stated that he approached the landlord to ask him if it was available and he obtained a lease for the premises. Mr. Alonzo was not asked if he purchased the assets from petitioner and/or the LLC.

47. Included in the record is the complete SLA file for the LLC, including evidence that petitioner appeared before the SLA on multiple occasions after March 9, 2015, the date she claims she sold the LLC to Mr. Torres. Moreover, after her liquor license was eventually cancelled, she continued to represent herself as the principal of the LLC. The Division also included a January 13, 2017 audio recording wherein petitioner appeared before the SLA.

### ***CONCLUSIONS OF LAW***

A. The Order dismissing the petition and sustaining the notice of determination, notice number L-049513097, dated March 5, 2019, issued to the LLC is now final and the LLC may take an exception within the time permitted by statute (*see* Tax Law § 2006 [7]; 20 NYCRR 3000.17 [a]).

B. With respect to petitioner, she first argues that the notice of determination issued to her did not have a rational basis so it should be cancelled because the Division refused to consider documentation that would go to proving she was not a responsible person. Petitioner's argument on this score is rejected. A presumption of correctness attaches to a properly issued statutory notice issued by the Division and the taxpayer bears the burden to prove that the

assessment is incorrect (*see Matter of Hotel Depot*, Tax Appeals Tribunal, January 24, 2020, citing *Matter of Darman Bldg. Supply Corp. v Mattox*, 106 AD3d 1150, 1151 [3d Dept 2013]; *Matter of Blodnick v New York State Tax Commn*, 124 AD2d 437, 438 [3d Dept 1986], *appeal dismissed* 69 NY2d 608 [1987]). Although a determination of tax must have a rational basis to be sustained, the presumption of correctness raised by the issuance of the assessment, in itself, provides the rational basis, so long as no evidence is introduced challenging the assessment (*see Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768, 769 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]). In this case, the determination to hold petitioner liable for the LLC's sales tax for the period in issue had a rational basis in the first instance based upon: (i) partnership returns that indicated she was the 99% owner of the LLC; (ii) electronically filed sales tax returns indicating that she was the submitter listing her home and personal email addresses; (iii) bank card merchant reports that were emailed to her personal email address; and (iv) her signing powers of attorney for the period at issue. Although it is possible that others could have filed these tax returns using her credentials, this claim, even if subsequently proven, does not act to make the issuance of the notice of determination irrational.

C. As noted, petitioner's liability is premised on her alleged status as a responsible person of the LLC. In this regard, Tax Law § 1133 (a) (1) provides that "every person required to collect any tax imposed by [article 28] shall be personally liable for the tax imposed, collected or required to be collected under this article." In turn, Tax Law former § 1131 (1), as in effect during the period in issue, defined "person required to collect any tax imposed by [article 28]" to include:

"any officer, director or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, or any employee of an individual proprietorship who as such officer, director, employee or manager is under a duty to act for such corporation,

partnership, limited liability company or individual proprietorship in complying with any requirement of this article; *and any member of a partnership or limited liability company*” (emphasis added).

D. The Tax Law contains no factors to qualify or limit the liability imposed upon members of partnerships or limited liability companies (*Matter of Santo*, Tax Appeals Tribunal, December 23, 2009; *Matter of Bartolomei*, Tax Appeals Tribunal, April 3, 1997). Clearly, Tax Law former § 1131 (1) provides that any member of a partnership or any member of a limited liability company is a “person required to collect any tax imposed by this article” and, as provided in Tax Law § 1133 (a), a member of a limited liability company “shall be personally liable for the tax imposed, collected or required to be collected under [article 28].”

E. Next, petitioner argues that she was not liable as a member of the LLC for the period in issue because she transferred ownership of the LLC to Mr. Torres on March 9, 2015. Petitioner has failed to meet her burden of proof. Preliminarily, Mr. Torres has denied the same, and the alleged contract and bill of sale purporting to transfer ownership to him do not appear to have his signature based upon a comparison of his admitted signatures to those two documents, nor is there proof of payment of the \$75,000.00 contract price. However, there were monthly checks issued from Made in Puerto Rico’s Chase Bank checking account in 2015 and 2016 totaling \$21,850.00 that petitioner alleged were issued to her and used to fulfill her obligations pursuant to a payment plan with the Division. Petitioner, in her brief, contends that these payments were made to her based upon Mr. Torres’ agreement to assume the LLC’s liabilities as set forth in the alleged contract for the transfer of her LLC interest. This argument is rejected because the plain language of the contract provides that Mr. Torres agreed to assume the LLC’s obligations, not petitioner’s personal obligations. A review of these checks issued to petitioner indicates that they had either “sales tax or “tax payment” written in the memo. In August 2016, however,

petitioner was issued an additional check for \$3,250.00 which had “Isla Verde Cafe Inc/Filing Corp Reg” written in the memo line. This discrepancy was not explained and raises questions as to whether petitioner was being compensated for the use of her liquor license and COA and/or was somehow in collusion with Mr. Torres. In addition, and more importantly, in appearances before the SLA, petitioner stated that she was the owner and was attempting to sell the business, but those attempts had been unsuccessful. This testimony is consistent with Mr. Torres’ testimony that, following petitioner’s attempted sale to a third party, he was hired to manage the LLC. Only later did he and his wife attempt to purchase the business, but due to the difficulties associated with obtaining a liquor license for the premises, abandoned the purchase. Three of the individuals that petitioner subpoenaed as witnesses, Mr. Torres, Ms. Hernandez and Mr. Alonzo, all stated that she was the owner of the LLC.

G. Petitioner’s claim that she only allowed Mr. Torres to use her liquor license and COA because she was under duress has not been proven by clear and convincing evidence. Petitioner testified that Mr. Torres threatened her and later asserted that he did not actually threaten her, but rather she felt threatened because of the way he spoke to her. Petitioner’s claim that Mr. Torres was well known in the community for being a street guy and a bad actor appears to be entirely based on his prior ownership of the Pompeii Lounge, an establishment that drew a raucous crowd. Here, statements by the Bronx Community Board #10 that Mr. Torres is a bad actor do not conclusively establish that he had a propensity to use threats of violence, much less that he threatened petitioner in order to use her liquor license. She provided no testimony or evidence to corroborate her allegation.

H. Petitioner has also contended that inconsistent statements made by Mr. Torres, Ms. Hernandez, Mr. Alonzo, Mr. Merante and Mr. Montemurro, establishes there was a conspiracy

amongst them in pursuit of a liquor license. In turn, this “conspiracy” would go toward proving that Mr. Torres had purchased the LLC, and petitioner was allowing use of her liquor license under duress. Here it is without argument that petitioner has established numerous false statements made by those involved. For example, Mr. Torres claimed he served in an administrative role for petitioner while running Made in Puerto Rico Restaurant and Sports Bar, Mr. Montemurro signing an affidavit stating petitioner had been a tenant in possession of the premises from the inception of the lease, Mr. Merante’s letter to the Worker’s Compensation Board stating the restaurant had no payroll between June 15, 2015 and June 6, 2016 while sales tax returns during that period of time reported several hundred thousand of sales. These inconsistencies certainly establish that the lengths that they would go to obtain a liquor license diminishes their credibility. However, petitioner has not made any connection between these inconsistent statements and whether or not petitioner sold the LLC and the subsequent claim of being under duress. While petitioner has established numerous false statements made by those involved, she herself made false statements to the SLA, and there is no indication that they were said under duress. Stated simply petitioner has not shouldered her burden of proving that she no longer owned the LLC or that she was under duress in allowing others to use her liquor license and COA.

I. The petition of Thirty 3 Sixty 3 LLC is denied in accordance with the order dated July 14, 2022, the petition of Jacqueline Acevedo Villanueva is denied and the notices of determination, dated March 5, 2019, and March 6, 2019 respectively, are sustained.

DATED: Albany, New York  
April 24, 2025

/s/ Kevin R. Law  
ADMINISTRATIVE LAW JUDGE