

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
VISHAL DHAR : DETERMINATION
for Revision of a Determination or for Refund of : DTA NO. 830620
Sales and Use Taxes under Articles 28 and 29 of the :
Tax Law for the Period March 1, 2007 through :
May 31, 2016. :
_____:

Petitioner, Vishal Dhar, 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 March 1, 2007 through May 31, 2016.

A formal hearing by videoconference was held before Alejandro Taylor, Administrative Law Judge, on January 18, 2024, with the final brief to be submitted by July 12, 2024, which date began the six-month period for the issuance of this determination. Petitioner appeared at the hearing by Polsinelli PC (Scott Arhoni, Esq., and Erika L. Colangelo, Esq., of counsel) and appeared pro se subsequent to the hearing, after the withdrawal of his representatives on March 4, 2024. The Division of Taxation appeared by Amanda Hiller, Esq. (Kaitlyn Smith, Esq., of counsel). This matter was reassigned to Barbara J. Russo, Administrative Law Judge, pursuant to the authority of section 3000.15 (f) of the Rules of Practice and Procedure of the Tax Appeals Tribunal.

After reviewing the entire record in this matter, Barbara J. Russo, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner was a person required to collect and remit tax under Tax Law §§ 1131 (1) and 1133 so that he is personally liable for sales tax determined due from iYogi, Inc., for the period March 1, 2007 through May 31, 2016.

FINDINGS OF FACT

1. iYogi, Inc. (iYogi), is a United States-based wholly owned subsidiary of parent holding company iYogi Limited (iYogi Ltd.). iYogi Ltd. is headquartered in Mauritius and operates subsidiaries in the United States, India, Spain and Singapore. iYogi is incorporated under the laws of New York State and has an office in New York, New York.

2. iYogi provided subscription-based services for computer related technical support during the period at issue.

3. Petitioner, Vishal Dhar, co-founded and incorporated iYogi in 2007.

4. Petitioner was “President-Marketing” of iYogi from March 27, 2007 through April or May 2016.

5. Petitioner worked at iYogi’s New York office during the period at issue.

6. iYogi closed as of May 31, 2016.

7. The Division of Taxation (Division) offered the testimony of Ndeye Seck, District Office Manager of the Division’s Queens District Office. Ms. Seck conducted a sales tax audit of iYogi for the period March 1, 2007 through February 28, 2015 (the first audit).

8. On December 4, 2012, the Division commenced an audit of iYogi for the period March 1, 2007 through November 30, 2012, and sent a written request to iYogi for all its books and records for this period.

9. On November 18, 2015, the Division expanded the audit period for the first audit to March 1, 2007 through February 28, 2015, and sent a written request for iYogi to provide its books and records for the expanded period.

10. iYogi did not provide the requested books and records.

11. On February 1, 2013, petitioner executed a power of attorney form on behalf of iYogi, granting Michael Buxbaum, CPA, and Stewart Buxbaum, CPA, the authority to act as the business's representatives for sales and use taxes for the period March 1, 2007 through November 30, 2012.

12. On June 16, 2014, petitioner executed a power of attorney form on behalf of iYogi, granting Robert G. Sperduto, CPA, the authority to act as the business's representative for income tax matters for the years 2012 through 2014. Petitioner signed this power of attorney form as "PRESIDENT" of iYogi.

13. On January 29, 2016, petitioner executed a power of attorney form on behalf of iYogi, granting Michael Buxbaum, CPA, the authority to act as the business's representative for sales and use taxes for the expanded period of December 1, 2012 through February 28, 2015. Petitioner signed this power of attorney form as "PRESIDENT" of iYogi.

14. During the course of the first audit, petitioner executed forms AU-2.10, consent to extension of time (consent), agreeing to extend the time within which the Division could assess sales tax against iYogi and against him as a responsible person of iYogi as follows. On September 23, 2013, petitioner signed a consent as a responsible person for iYogi, listing his title as "President Marketing," agreeing to extend the time the Division could determine sales tax he owed as a responsible person of iYogi for the period March 1, 2007 through May 31, 2011 to June 20, 2014. On May 8, 2014, petitioner signed a consent as a responsible person for iYogi,

listing his title as “PRESIDENT,” agreeing to extend the time the Division could determine sales tax he owed as a responsible person of iYogi for the period March 1, 2007 through May 31, 2012 to June 20, 2015. On April 22, 2015, petitioner signed a consent as a responsible person for iYogi, listing his title as “PRESIDENT,” agreeing to extend the time the Division could determine sales tax he owed as a responsible person of iYogi for the period March 1, 2007 through November 30, 2012 to December 20, 2015. On January 29, 2016, petitioner signed a consent on behalf of iYogi, listing his title as “PRESIDENT,” agreeing to extend the time the Division could determine sales tax due from iYogi for the period March 1, 2012 through February 28, 2014 to March 20, 2017.

15. During the course of the first audit, the Division’s auditor retrieved a LexisNexis report for iYogi. The LexisNexis report lists petitioner as an executive of iYogi with the titles of “CHAIRMAN” from March 2008 through June 8, 2015, “PRESIDENT” from March 2008 through June 8, 2015, and “DIRECTOR” from October 26, 2011 through November 7, 2011.

16. At the conclusion of the first audit, the Division issued notice of determination L-044062999, dated December 2, 2015, to iYogi for the period March 1, 2007 through February 29, 2012, asserting tax of \$6,388,946.72, plus penalties and interest, and notice of determination L-044466697, dated February 26, 2016, to iYogi for the period March 1, 2012 through February 28, 2015, asserting tax of \$11,754,084.79, plus penalties and interest.

17. As a result of the first audit, the Division determined that petitioner, Laurence Gordon, and Uday Challu were responsible persons for iYogi for sales tax purposes.

18. On December 3, 2015, the Division issued notice of determination L-044066398 to petitioner as an officer/responsible person of iYogi, asserting tax of \$6,388,946.72, plus penalties and interest, for the period March 1, 2007 through February 29, 2012.

19. On February 29, 2016, the Division issued notice of determination L-044470441 to petitioner as an officer/responsible person of iYogi, asserting tax of \$11,754,084.79, plus penalties and interest, for the period March 1, 2012 through February 28, 2015.

20. On July 15, 2016, Michael Buxbaum, CPA, filed a petition with the Division of Tax Appeals on behalf of iYogi protesting a conciliation order from the Bureau of Conciliation and Mediation Services (BCMS) that sustained notice number L-044062999. Attached to the petition was the power of attorney form, dated February 1, 2013, signed by petitioner on behalf of iYogi (*see* finding of fact 11). The Division of Tax Appeals assigned this matter DTA No. 827766.

21. On January 9, 2017, Michael Buxbaum, CPA, filed a petition with the Division of Tax Appeals on behalf of iYogi protesting a conciliation order from BCMS that sustained notice number L-044466697. Attached to the petition was the power of attorney form, dated January 29, 2016, signed by petitioner on behalf of iYogi (*see* finding of fact 13). The Division of Tax Appeals assigned this matter DTA No. 828031.

22. During the pendency of the proceedings for DTA Nos. 827766 and 828031, the Division and Mr. Buxbaum, on behalf of iYogi, agreed to settle the matters. For notice numbers L-044062999 and L-044466697, the Division and Mr. Buxbaum agreed to a 30 percent taxable ratio on sales and penalty abatement. The Division and Mr. Buxbaum executed a stipulation for discontinuance, dated November 13, 2018, for DTA Nos. 827766 and 828031, agreeing to tax in the amount of \$5,107,020.72, plus interest, and zero penalties for the period March 1, 2007 through February 28, 2015. On February 8, 2019, the Division of Tax Appeals issued an order of discontinuance for DTA Nos. 827766 and 828031, reflecting the amounts stated in the stipulation for discontinuance.

23. As a result of the settlement agreed to by the Division and iYogi for the period March 1, 2007 through February 28, 2015, petitioner's associated responsible person assessments, L-044066398 and L-044470441, for the periods March 1, 2007 through February 29, 2012 and March 1, 2012 through February 28, 2015, respectively, were adjusted to reflect the amounts agreed to in the stipulation for discontinuance for DTA Nos. 827766 and 828031.

24. While the proceedings for DTA Nos. 827766 and 828031 were in progress, the Division commenced a follow-up audit of iYogi for the period March 1, 2015 through February 28, 2018 (the second audit). On May 18, 2018, the Division sent a written request for iYogi's books and records for the second audit period. The written request for books and records was returned without delivery. As a result, the Division sent appointment letters and requests for books and records to the home address of petitioner and two other individuals as responsible persons for iYogi on May 24, 2018 and June 14, 2018, respectively.

25. The Division's tax field audit record for the second audit indicates that it received a power of attorney for iYogi on June 19, 2018. The record does not indicate who signed the power of attorney form on behalf of iYogi.

26. The Division introduced an affidavit, sworn to on August 2, 2023, of George K. Peter, an Auditor 1 in the Division's Transactions Tax Unit. Mr. Peter conducted the second audit of iYogi.

27. On June 20, 2018, Mr. Buxbaum requested that Mr. Peter adjourn the audit appointment scheduled for the second audit because iYogi had closed and the proceedings were pending at the Division of Tax Appeals for DTA Nos. 827766 and 828031.

28. On or about November 16, 2018, after the execution of the stipulation for discontinuance for DTA Nos. 827766 and 828031, the Division resumed the second audit of iYogi and scheduled an audit appointment with Mr. Buxbaum.

29. During the course of the second audit, Mr. Buxbaum indicated that iYogi was out of business. An email from Mr. Buxbaum to petitioner, dated December 12, 2018, asked for the date iYogi went out of business. Petitioner responded by email to Mr. Buxbaum on January 10, 2019, stating that iYogi was closed in May 2016.

30. A teleconference was held between the Division and Mr. Buxbaum on December 12, 2018. Mr. Buxbaum indicated that there were no records for iYogi for the second audit and that he would settle the matter based on the closing date of iYogi and the agreement reached for the first audit.

31. Mr. Peter adjusted the second audit period to March 1, 2015 through May 31, 2016 to reflect the closing date of iYogi.

32. Mr. Peter calculated tax due from iYogi for the second audit based on the 30 percent taxable ratio on sales agreed to by iYogi for the first audit (*see* finding of fact 22). Based on this calculation he determined tax due from iYogi in the amount of \$1,172,965.30 for the period March 1, 2015 through May 31, 2016.

33. The Division issued a statement of proposed audit change (statement), dated January 17, 2019, to iYogi asserting tax due of \$1,172,965.30, plus interest, for the period March 1, 2015 through May 31, 2016.

34. On January 23, 2019, Mr. Buxbaum signed the statement on behalf of iYogi, agreeing to the amount assessed for the period March 1, 2015 through May 31, 2016.

35. The Division did not receive payment with the signed statement and, on February 7, 2019, issued a notice and demand for payment of tax due in the amount of \$1,172,965.30, plus interest, for the period March 1, 2015 through May 31, 2016 to iYogi.

36. On February 8, 2019, the Division issued notice of determination L-049453130 to petitioner as an officer/responsible person of iYogi, asserting tax of \$1,172,965.30, plus interest, for the period March 1, 2015 through May 31, 2016.

37. Petitioner executed a master service agreement (agreement), dated March 8, 2007, between iYogi and iYogi Ltd. Petitioner signed the agreement on behalf of iYogi as “President-Marketing.” The agreement provides, in part, that iYogi bears the cost of any taxes imposed on its customer support services including any taxes on income and payroll.

38. Petitioner executed an executive employment agreement, dated March 27, 2007, between himself, iYogi, and iYogi Ltd., in which he agreed to devote 100% of his business time to iYogi.

39. On May 20, 2008, petitioner signed a New York State quarterly combined withholding, wage reporting, and unemployment insurance return, form NYS-45-MN, for the third quarter of 2008 (withholding return) for iYogi. Petitioner listed his title on the withholding return as “PRESIDENT MARKETING.”

40. On December 28, 2008, petitioner signed a 2007 U.S. corporation income tax return, form 1120, for iYogi. Petitioner listed his title as “President Marketing” on this return.

41. Petitioner had the authority to sign invoices for iYogi during the period at issue. Included in the record are invoices signed by petitioner as an authorized signatory of iYogi from 2009 through 2011.

42. Form DTF-17, application to register for a sales tax certificate of authority, for iYogi, dated August 11, 2010, lists petitioner's name, social security number and address in Section G, responsible persons information. Petitioner's typed name appears in section I of form DTF-17, under signature of responsible person, with his title listed as "President." The DTF-17 is not signed.

43. Schedule E of the 2010 form 1120 for iYogi lists petitioner as an officer, reports that he devoted 100% of his time to the business and received compensation in the amount of \$160,000.00. No other officers are listed on this schedule.

44. iYogi's 2011 form 1125-E, compensation of officers, lists petitioner as an officer and reports that he devoted 100% of his time to the business and received compensation in the amount of \$160,000.00.

45. iYogi's 2012 form 1125-E, compensation of officers, lists petitioner as an officer, reports that he devoted 100% of his time to the business and received compensation in the amount of \$140,000.00.

46. iYogi's 2013 form 1125-E, compensation of officers, lists petitioner as an officer, reports that he devoted 100% of his time to the business and received compensation in the amount of \$160,000.00.

47. Included in the Division's audit file is a printout from iYogi's website, printed on November 18, 2015. The Division's auditor, Ms. Seck, reviewed iYogi's website during the course of the audit. The website listed petitioner as co-founder and "President Marketing" of iYogi, and states that he and Uday Challu started iYogi in 2007. Ms. Seck testified that during

the completion of the audit, she accessed the website again and petitioner was still listed as co-founder and president marketing of iYogi.

48. Petitioner and Mr. Challu were the largest shareholders of ordinary shares of iYogi's parent holding company, iYogi Ltd., each holding 28.37%. Combined, petitioner and Mr. Challa had a controlling interest in iYogi's holding company. The holding company owned 100% of iYogi.

49. Petitioner testified that he had the ability to sign checks for iYogi and issued checks for iYogi's rent, cleaning services, and health insurance. According to petitioner, he would sign a check for iYogi "if somebody [from iYogi in India] told [him] there was a check that had to be issued[.]"

50. Petitioner presented the testimony of Robert Sperduto, CPA, during the hearing. Mr. Sperduto's business relationship with iYogi began in March 2011 and "strictly" involved the preparation of corporate income tax returns. Mr. Sperduto testified that he dealt with individuals in India, including Bhupesh Kumar, Madhur Jain, Deepak Maheshwari, and Subhash Agarwal, for the preparation of the federal corporate returns and did not recall speaking with petitioner about the preparation of these returns. Mr. Sperduto stated that he believed iYogi's corporate returns for 2010 through 2014 were unsigned because they were electronically filed. According to Mr. Sperduto, petitioner was not involved in preparing the corporate income tax returns.

51. Petitioner did not submit a brief or reply brief within the time provided after the conclusion of the hearing.

52. BCMS issued a conciliation order dismissing petitioner's request for a conciliation conference for notice numbers L-044066398, L-044470441 and L-049453130 on the basis that

the request was late filed. The Division raised the jurisdictional issue of timeliness in its answer but did not introduce any proof of mailing of the notices into the record.

CONCLUSIONS OF LAW

A. Addressing first the BCMS conciliation order dismissing request, issued on the basis that petitioner's protest for the notices at issue was untimely, the initial inquiry regarding the timeliness of a protest is whether the Division has carried its burden of demonstrating proper issuance of the notices being challenged by mailing the same, by certified or registered mail, to petitioner's last known address (*see Matter of Katz*, Tax Appeals Tribunal, November 14, 1991; *Matter of Novar TV & Air Conditioner Sales & Serv.*, Tax Appeals Tribunal, May 23, 1991). In this case, the Division presented no evidence of either its standard procedure for mailing statutory notices or that such procedure was followed in this instance. As such, the Division has not met its burden of demonstrating proper mailing in the first instance (*see Matter of Ruggerite, Inc. v State Tax Commn.*, 97 AD2d 634 [2nd Dept 1983], *affd* 64 NY2d 688 [1984]). The consequences of this failure to establish the date and fact of mailing are that the period within which a protest must be filed does not commence, and that the presumption of receipt of a notice that ordinarily arises upon proof of proper mailing does not attach (*see Matter of Sugranes*, Tax Appeals Tribunal, October 3, 2002). A failure to prove proper mailing can be overcome by other evidence establishing actual receipt of a notice and the date of such actual receipt, and thereby commence the period within which a petition or a request for conference must be filed in order to be considered timely (*see e.g. Matter of New York City Billionaires Constr. Corp.*, Tax Appeals Tribunal, October 20, 2011). Where, as here, the Division's proof fails to establish the date of mailing of the notice, but where there is no question that the notice was in fact actually received, the time period for filing a protest against the notice is not triggered until the date of

petitioner's actual receipt of the notice is established (*see Matter of Hyatt Equities, LLC*, Tax Appeals Tribunal, May 22, 2008; *Matter of Riehm v Tax Appeals Trib.*, 179 AD2d 970 [3d Dept 1992], *lv denied* 79 NY2d 759 [1992]), unless issuance of the assessment itself was precluded as time-barred by operation of the period of limitations thereon, which is not the case herein (*see Matter of Agosto v Tax Commn. of the State of New York*, 68 NY2d 891 [1986], *revg* 118 AD2d 894 [3d Dept 1986]; *Matter of Rosen*, Tax Appeals Tribunal, July 19, 1990). In this case, there is no question that the notices were received, by virtue of petitioner's filing of a request for conciliation conference, but there is no evidence in the record establishing a date of actual receipt prior to the date petitioner filed the request. As such, petitioner's protest of the notices is deemed timely and the Division of Tax Appeals has jurisdiction to address the merits of this matter.

B. Tax Law § 1133 (a) (1) provides that: “[e]very 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.”

Tax Law § 1131 (1), in turn, defines “[p]ersons required to collect tax” and a “person required to collect any tax imposed by [article 28]” to include, among others, corporate officers, directors and employees who are under a duty to act for such corporation in complying with the requirements of article 28 of the Tax Law.

C. Whether a person is an officer or employee liable for tax must be determined based upon the particular facts of each case (*Matter of Cohen v State Tax Commn.*, 128 AD2d 1022, 1023 [3d Dept 1987]; *Matter of Hall*, Tax Appeals Tribunal, March 22, 1990, *confirmed* 176 AD2d 1006 [3d Dept 1991]; *Matter of Martin*, Tax Appeals Tribunal, July 20, 1989, *confirmed* 162 AD2d 890 [3d Dept 1990]; *Matter of Autex Corp.*, Tax Appeals Tribunal, November 23,

1988). The pivotal question is whether the individual had or could have had sufficient authority and control over the affairs of the corporation (*Matter of Ianniello*, Tax Appeals Tribunal, November 25, 1992, *confirmed* 209 AD2d 740 [3d Dept 1994]). Failure to exercise such authority does not relieve the individual of liability: “[t]he fact that petitioners did not in fact exercise their responsibilities is irrelevant” (*Matter of Blodnick v New York State Tax Commn.*, 124 AD2d 437, 438 [3d Dept 1986]; *see also Matter of LaPenna*, Tax Appeals Tribunal, March 14, 1991). Factors to be considered include the individual’s status as an officer, director, or shareholder; the individual’s day-to-day responsibilities; the duties and functions as outlined in the certificate of incorporation and bylaws; knowledge of and control over the financial affairs of the corporation; the authority to write checks on behalf of the corporation; responsibility for maintaining the corporate books; authority to sign sales tax forms; the preparation and filing of sales tax returns; authority to hire and fire employees; and the individual’s economic interest in the corporation (*see Matter of Cohen v State Tax Commn.*, 128 AD2d at 1023; *Matter of Ianniello*; *Matter of Young*, Tax Appeals Tribunal, September 19, 1991; *Matter of Constantino*, Tax Appeals Tribunal, September 27, 1990; *Matter of Autex Corp.*).

D. Petitioner does not dispute the underlying sales tax liability assessed against iYogi. The duly authorized representative for iYogi entered into a stipulation for discontinuance with the Division for the period March 1, 2007 through February 28, 2015, agreeing to tax in the amount of \$5,107,020.72, plus interest, and zero penalties. Similarly, iYogi’s representative signed the statement, agreeing to tax due of \$1,172,965.30, plus interest, for the period March 1, 2015 through May 31, 2016. Petitioner does not dispute the amount of sales tax due as agreed to by iYogi for these periods.

The only issue in dispute is whether petitioner had, or could have had, sufficient authority and control over the affairs of iYogi to be considered a person under a duty to collect and remit the unpaid taxes in question. In order to prevail:

“petitioner was required to establish by clear and convincing evidence that he was not an officer having a duty to act on behalf of the corporation, i.e., that he lacked the necessary authority or he had the necessary authority, but he was thwarted by others in carrying out his corporate duties through no fault of his own” (*Matter of Goodfriend*, Tax Appeals Tribunal, January 15, 1997) [citations omitted]).

E. Petitioner bears the burden of proof to overcome the presumed correctness of the Division’s assessment (*Matter of Mera v Tax Appeals Trib.*, 204 AD2d 818, 821 [3d Dept 1994]; *Matter of Blodnick v New York State Tax Commn.*, 124 AD2d at 438). Upon review of the record, it is clear that petitioner has not met this burden and is properly held responsible for iYogi as an officer under a duty to act for such corporation in complying with the requirements of article 28.

Petitioner was the co-founder and incorporator of iYogi. He was an officer of iYogi with the title of “President Marketing” during the period at issue and devoted 100% of his time to the business. Petitioner also listed his title as “President” of iYogi on several documents he signed, including consents extending the time for tax assessments on behalf of iYogi and himself as responsible person thereof, and power of attorney forms he signed on behalf of iYogi. Petitioner was a shareholder of iYogi’s parent holding company, iYogi Ltd. He and iYogi’s co-founder, Mr. Challu, each held 28.37% of iYogi’s holding company, and combined, held a controlling interest in the holding company, which owned 100% of iYogi. Petitioner had an economic interest in iYogi, both through his shares in the holding company, as well as through his significant compensation as an officer. He derived substantial income from iYogi during the period at issue, as evidenced by the corporation’s schedule E of form 1120 and forms 1125-E,

compensation of officers. Petitioner had the authority to sign tax forms on behalf of iYogi for the period at issue, as evidenced by his signature on the power of attorney forms and consents extending the time for tax assessments provided to the Division during the audit, and the power of attorney forms submitted with iYogi's petitions. Petitioner signed tax returns on behalf of iYogi, including iYogi's withholding return for the third quarter of 2008 and iYogi's 2007 federal corporate income tax return. Petitioner also had the authority to sign invoices for iYogi during the period at issue and exercised that authority. Further, he admitted that he had the "ability" to sign checks for iYogi and issued checks for rent, health insurance, and other expenses. These uncontested facts show that petitioner had, or could have had, sufficient authority and control over the affairs of iYogi to be considered a responsible person for iYogi and petitioner has not met his burden to prove otherwise (*see Matter of Black*, Tax Appeals Tribunal, August 6, 2020; *Matter of Cho*, Tax Appeals Tribunal, February 9, 2017; *Matter of Napoli*, Tax Appeals Tribunal, July 13, 1995; *Matter of Kropf*, Tax Appeals Tribunal, March 21, 1991).

F. "Absent compelling circumstances which establish that apparent authority is not actual authority, an individual with the indicia of responsibility for the collection and payment of sales tax will be liable for the failure to do so" (*Matter of Napoli*). Petitioner here has failed to meet his burden of proving any such compelling circumstances to establish that he did not have actual authority. Petitioner asserts that iYogi's holding company in India is responsible for the unpaid sales tax. However, petitioner was a shareholder of the holding company that owned 100% of iYogi during the period at issue. He and the co-founder of iYogi were the largest shareholders of ordinary shares of the holding company, each holding 28.37% and, combined, had a controlling interest in the holding company which held 100% of iYogi. Establishing a

corporate structure in which the corporation in question is wholly held by a parent company does not relieve the officer of that corporation of his sales tax duties. It is well settled that an officer cannot relieve himself of his responsibility for operating his corporation and expect that he will be relieved of sales tax liability (*see Matter of Napoli; Matter of Unger*, Tax Appeals Tribunal, March 24, 1994). Moreover, while petitioner contends that his actions on behalf of iYogi and signatures on tax returns, tax forms, checks and other business documents for iYogi were directed by other individuals from iYogi's holding company in India, he has failed to carry his burden of proving that he lacked sufficient authority or control over the corporation to be considered a person under a duty to collect and remit the unpaid taxes in question (*see e.g. Matter of Tavolacci v State Tax Commn.*, 77 AD2d 759, 760 [3d Dept 1980]).

Petitioner did not submit sufficient evidence proving his roles and responsibilities as an owner and officer of the corporation, but instead relies upon self-serving testimony which is insufficient to meet his burden of proof (*see e.g. Matter of Marchello*, Tax Appeals Tribunal, April 14, 2011). Other than his own self-serving testimony, the only other testimony provided on behalf of petitioner was that of Mr. Sperduto, who testified that he was "strictly" involved with the preparation of iYogi's corporate income tax returns starting in 2011. As such, Mr. Sperduto had no knowledge of iYogi's affairs and responsible persons prior to that year. Further, he was not involved with and did not provide any testimony regarding the preparation and filing of iYogi's sales tax returns or who was responsible for iYogi's sales or the remittance of sales tax. Additionally, although he testified that he did not deal with petitioner for the corporate income tax returns, Mr. Sperduto did not explain why petitioner signed a power of attorney form appointing him as the representative for iYogi's income tax matters for the years 2012 through 2014. Further, his testimony did not rebut the documentary evidence that showed

petitioner signed numerous tax forms on behalf of iYogi. As such, Mr. Sperduto's testimony is unpersuasive and fails to show that petitioner was not responsible for the collection and payment of iYogi's sales tax obligations.

While petitioner contends that his responsibilities were determined by the board of directors of iYogi Ltd., he has not shown that he lacked sufficient authority to ensure that the business's sales tax obligations were paid or that he was thwarted by others in carrying out his corporate duties through no fault of his own. Furthermore, petitioner's claim that he had no control over tax issues is proven to be disingenuous, based on the documentary evidence to the contrary. Indeed, the agreement between iYogi and iYogi Ltd. that petitioner signed on behalf of iYogi requires that iYogi bears the cost of any taxes imposed on its customer support services including any taxes on income and payroll. Thus, petitioner clearly had the authority to dictate iYogi's payment of taxes. Petitioner has failed to meet his burden of proof to show that he did not have or could not have exercised sufficient authority and control over iYogi's affairs during the period at issue so as to be excused from responsibility for its tax obligations (*see Matter of Shah*, Tax Appeals Tribunal, February 25, 1999).

G. Petitioner's contention that other individuals from iYogi's parent holding company are responsible for iYogi's unpaid taxes is unavailing. It is well settled law that more than one person can be held liable as a responsible officer under the statute, and liability is joint and several (*see Matter of Blodnick v New York State Tax Commn.*, 124 AD2d at 438; *Matter of Hurley*, Tax Appeals Tribunal, July 16, 1998; *Matter of LaPenna*). Merely pointing to another individual and alleging such individual is a responsible officer does not establish that other individuals are not responsible officers as well (*see Matter of LaPenna*). Moreover, the Division is under no obligation to pursue other allegedly responsible persons before proceeding

against petitioner (*see Matter of Risoli v Commissioner of Taxation and Fin.*, 237 AD2d 675, 677 [3d Dept 1997]). As such, whether other individuals may also be responsible for iYogi's sales tax obligations does not relieve petitioner of liability.

H. The petition of Vishal Dhar is denied, and the notices of determination dated December 3, 2015, February 29, 2016, and February 8, 2019, are sustained.

DATED: Albany, New York
December 19, 2024

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE