

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
	:	
of	:	
	:	
HAFTAN ECKHOLDT	:	DETERMINATION
	:	DTA NO. 850007
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 December 1, 2015 through August	:	
31, 2018.	:	

Petitioner, Haftan Eckholdt, filed a petition for revision of a determination or refund of sales and use taxes under articles 28 and 29 of the Tax Law for the period December 1, 2015 through August 31, 2018.

A formal hearing by videoconference was held on June 27, 2024, before Alexander Chufong, Administrative Law Judge, with all briefs due by November 5, 2024, which date began the six-month period for the issuance of this determination. Petitioner appeared by Polsinelli, PC (Scott Ahroni, Esq., and Erika Colangelo, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Karry L. Culihan, Esq., of counsel).

ISSUE

Whether petitioner was personally liable for the sales and use taxes due on behalf of Lazy Ibis LLC, as a person required to collect and pay such taxes under Tax Law §§ 1131 (1) and 1133 (a), for the period December 1, 2015 through August 31, 2018.

FINDINGS OF FACT

Pursuant to 20 NYCRR 3000.17, petitioner, Haftan Eckholdt, and the Division of Taxation (Division) entered into a joint stipulation of facts and exhibits, introducing 17 exhibits and presenting 15 substantive facts. To the extent relevant, these facts have been substantially incorporated herein.

1. Petitioner was a coffee enthusiast who lived in Brooklyn, New York. He had a career as a data scientist and, while working remotely, would drink coffee at local cafés. Prior to and during the beginning of the period at issue, he lived in Brooklyn's Park Slope neighborhood and participated in its local café community, including patronizing an establishment named Ozzie's.

2. In 2008 or 2009, while visiting Ozzie's, he met Raphael Bernadine, a talented coffee bean roaster who worked there full-time. Petitioner enjoyed his roasts and their conversations. The two developed a rapport over the years and became friends. When Mr. Bernadine started working at another café, Noella, petitioner visited that establishment. Mr. Bernadine shared his aspirations to open his own café one day. As time went on, he became more serious about the idea and sought petitioner's assistance in setting up the business.

3. Petitioner's experience did not include business ownership or working in the hospitality industry. He also had no experience with sales and use taxes because he never worked in a role that required him to file sales tax returns or with a company that made taxable sales of food and beverages. Petitioner did have some relevant construction experience from considering renovations on his own property and from his service on the board of the Park Slope United Methodist Church. During his tenure, the church, which fed the community's needy population, renovated its commercial kitchen. Petitioner priced out the project, including

commercial gas stoves and vents. He also had experience reading commercial leases from reviewing a complex agreement between the church and a preschool, Beansprouts.

4. In addition to his construction and lease-reading experience, petitioner also provided other assistance to Mr. Bernadine. He loaned his laptop to Mr. Bernadine, who did not have one, and advised him with developing the business's website and legal structure. He also introduced Mr. Bernadine to a business banker at a local Chase Bank branch. Petitioner allowed Mr. Bernadine to use his personal residence as the business's initial mailing address because Mr. Bernadine feared that his plans to open up his own café would bring retribution from his employer at Noella, who was also his landlord.

5. On February 28, 2013, Ibis, LLC (Lazy Ibis) was organized as a limited liability company under the laws of New York State. Petitioner was not a member.

6. Also on February 28, 2013, Lazy Ibis entered into a commercial lease agreement with Davalnock Construction Corp. (Davalnock) for a property located at 663 Franklin Avenue, Brooklyn, New York (Franklin Avenue address). This construction company was owned by another café patron, who was investing in Lazy Ibis. Petitioner reviewed this lease for Mr. Bernadine, but the lease did not reference petitioner, nor did it bear petitioner's signature. Lazy Ibis and Davalnock executed the agreement on the same date, i.e., February 28, 2013, and the document bears Mr. Bernadine's signature as "President/Owner" of Lazy Ibis.

7. In the weeks following the execution of the lease, petitioner conducted a physical inspection of the Franklin Avenue address. He was excited for his friend and wanted to help Mr. Bernadine. Applying his construction experience, petitioner concluded that the property needed a gut renovation, and it was later demolished prior to Lazy Ibis opening its café.

8. On April 3, 2013, the Division received a form DTF-17, application to register for a sales tax certificate of authority for Lazy Ibis. This document, in section G, “Responsible person(s),” lists only the name of petitioner and indicates that he is the “TREASURER.” Form DTF-17 also listed a mailing address for Lazy Ibis in Brooklyn, New York, which was petitioner’s residential address. In section I, “Signature of responsible person,” the document listed petitioner’s name, his social security number (SSN), the title of “TREASURER,” as well as a phone number. The signature box lacked a signature.

9. On the same date, the Division received form DTF-17-ATT, schedule of business locations for a consolidated filer. In the “Signature of responsible person” section, this form listed petitioner’s name and identified his title as “TREASURER.” As with form DTF-17, the signature line box lacked a signature.

10. On April 4, 2013, the Division accepted Lazy Ibis’s form DTF-17 and issued it a certificate of authority, which was mailed to petitioner’s Brooklyn, New York, address.

11. On September 3, 2013, the Division received a form NYS-45 WEB, quarterly combined withholding, wage reporting, and unemployment insurance return, for Lazy Ibis. In the “Submitted by” line, this document listed, “HAFTANECKHOLDT.”

12. On February 21, 2014, the members of Lazy Ibis entered into an operating agreement. This document outlined the company’s operations, including its purpose, assets, dissolution and initial contributions. The document identified Mr. Bernadine, Rafael Bernadine¹ and Flannery Spring-Robinson as the members of Lazy Ibis and bore their signatures. The operating agreement neither referenced petitioner nor bore his signature.

¹ Rafael Bernadine was Raphael Bernadine’s husband and business partner. All references to Mr. Bernadine refer to Raphael Bernadine.

13. On March 12, 2014, the Division issued a certificate of authority to Lazy Ibis in Mr. Bernadine's name, at the Franklin Avenue address.

14. Also on March 12, 2014, a "Business Contact Information" form (BCI form) for Lazy Ibis was submitted to the Division. In the fields of "Sales Tax," "Withholding Tax," "Limited Liability Tax" and "Taxpayer," this document listed Mr. Bernadine and the Franklin Avenue address. In the "Submitted by" line, the BCI form listed petitioner's name.

15. In 2014, Lazy Ibis opened its café for business.

16. In 2015, petitioner switched jobs and moved to Manhattan, New York. As a result, he was in Brooklyn, New York, less frequently and lost touch with the local café community, including Mr. Bernadine.

17. Apart from visiting the Franklin Avenue address prior to the demolition, petitioner only visited Lazy Ibis's café a few times to congratulate Mr. Bernadine and to purchase beans.

18. Petitioner next interacted with Mr. Bernadine years later, when the latter asked for petitioner's assistance with the dissolution of Lazy Ibis's lease.

19. On June 18, 2019, the Division initiated an audit of Lazy Ibis for sales and use taxes for the period at issue because it failed to file required sales tax returns. On June 19, 2019, the Division mailed documents, including a delinquency letter, to petitioner.

20. On June 27, 2019, the parties spoke over the phone and discussed form DTF-17, which listed petitioner as the treasurer, and form NYS-45 WEB that indicated he submitted it. During this conversation, petitioner informed the Division that he did not file any sales tax returns and that he would contact the owner of Lazy Ibis.

21. On July 26, 2019, the Division received a letter from petitioner indicating that he was not a responsible person for Lazy Ibis.

22. On November 26, 2019, petitioner again called the Division and explained that he was not involved in the business of Lazy Ibis and did not have access to any of the business's bank accounts. Petitioner provided the Division with information about Mr. Bernadine. The Division informed petitioner that it still would be assessing him as a responsible person for sales and use taxes on behalf of the business because he is listed on form DTF-17.

23. The Division concluded the audit by determining that for the period at issue, based upon third party merchant card information, Lazy Ibis failed to remit sales tax in the principal amount of \$40,499.30.

24. On February 11, 2020, the Division issued notice of determination L-051255708 (notice) to petitioner, assessing sales and use taxes due in the amount of \$40,499.30, plus penalties and interest, for the December 1, 2015 through August 31, 2018 (period at issue). The notice indicated that petitioner was liable as an officer or person responsible to collect and remit sales and use taxes on behalf of Lazy Ibis, LLC (Lazy Ibis).

25. Petitioner requested a conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS). On June 16, 2024, a conciliation conference was held by teleconference. On September 24, 2021, BCMS issued conciliation order CMS No. 000320022, sustaining the notice.

26. On December 15, 2021, petitioner filed a timely petition with the Division of Tax Appeals protesting the conciliation order.

27. In this matter, the Division submitted copies of Lazy Ibis's forms DTF-17, DTF-17-ATT and NYS-45 WEB, and the BCI form. The Division also submitted a printout of an "Entity Information" webpage for Lazy Ibis from the New York State Department of State, Division of Corporations (DOS webpage). Under the heading "DOS Process (Address to which DOS will

mail process if accepted on behalf of the entity),” the document listed petitioner and his Brooklyn, New York, residential address. The Division did not introduce any other proof that petitioner served as Lazy Ibis’s treasurer.

28. The Division also submitted the relevant case management note summary (case summary), which contained records of its interactions with petitioner during the audit (*see* findings of fact 20-23). The case summary did not indicate that during any interaction, the Division affirmatively explained to petitioner what is a DTF-17 or its significance. It also did not indicate that petitioner affirmatively stated that he did not authorize or file the DTF-17.

29. During the audit, petitioner did not request a copy of the DTF-17. He also did not request a copy at any point afterwards.

30. In his petition, petitioner did not indicate that he did not authorize or file the DTF-17.

31. Shortly after filing the petition, petitioner made a freedom of information law (FOIL) request. On August 3, 2022, the Division provided its FOIL response. Due to petitioner’s counsel changing firms, petitioner did not receive the documents until November 2023, which was his first opportunity to review the FOIL response.

32. On November 21, 2023, petitioner reviewed the FOIL response, which included form DTF-17. This was the first time that petitioner had seen forms DTF-17, DTF-17-ATT and NYS-45 WEB.

33. At the hearing, petitioner submitted various documents, including Lazy Ibis’s operating agreement (*see* finding of fact 12), its commercial lease agreement (*see* finding of fact 6), and the March 12, 2014, certificate of authority (*see* finding of fact 13).

34. The record includes an affidavit, sworn to by petitioner on April 16, 2020. In this document, which was originally submitted to BCMS, petitioner attested that he was not involved

in the operations of Lazy Ibis. As he advised the Division during the audit, petitioner asserted that Mr. Bernadine was the owner of Lazy Ibis, and that he had only assisted him with setting up the business. Petitioner's additional sworn statements included the following: he was not a party to the operating agreement; he never held any position, authority or equity in Lazy Ibis; he was never employed or held any responsibilities for Lazy Ibis; he had no consulting agreement with or received any payment from Lazy Ibis or from Mr. Bernadine; he did not hire or fire employees; he had no responsibilities regarding tax compliance, filings or payment; he lacked any authority over or knowledge of Lazy Ibis's books and records; he was not a signatory on the entity's bank account; and he did not sign any checks on behalf of Lazy Ibis's.

35. At the hearing, Thomas Rifenberg, a Tax Technician II (the auditor), with the Division with 11 years of experience, testified on behalf of the Division. He explained that as a supervisor of sales tax audits and, as an employee who directly reported to him worked on this audit, he reviewed all paperwork related to the business audit as well as the assessment of petitioner as a responsible person. In addition, he had reviewed the files submitted by the parties at the hearing.

36. The auditor explained that the Division requires the filing of form DTF-17 in order to operate a business in New York State. He explained that the Division receives approximately 75,000 forms DTF-17 annually and automatically processes them. The auditor stated that the Division lacks the ability to verify who actually filed the form and it relies on taxpayers to file accurate data. The auditor stated that the Division has a fraud identification unit that investigates claims of fraudulently filed documents. He confirmed that the Division is not aware of fraudulent activity until notified by a taxpayer.

37. Turning to the form DTF-17 in question, the auditor noted this form indicated that petitioner was the person who submitted it, but he acknowledged that the document was not signed. The auditor indicated that petitioner's account was not flagged for fraud.

38. The auditor also reviewed the BCI form, which, he explained, is used by taxpayers to update business addresses on file with the Division. Turning to the specific BCI form in question, he reviewed it and testified that the form states that it was filed by petitioner.

39. The auditor testified that the Division concluded that petitioner had sufficient authority over Lazy Ibis because he was listed as the treasurer on its form DTF-17 . He stated that because the form DTF-17 listed petitioner as such, the Division assumed that petitioner would be handling money for Lazy Ibis and, therefore, would have check signing authority. The auditor testified that, in his review of the record, apart from form DTF-17, he could not find any document affirmatively indicating that petitioner was employed by Lazy Ibis or that petitioner had authority to hire and fire Lazy Ibis's employees. The auditor also confirmed that, in his review, no documents demonstrated that petitioner had the authority to direct payments on behalf of Lazy Ibis.

40. At the hearing, Ms. Spring-Robinson testified on behalf of petitioner. She confirmed the authenticity of Lazy Ibis's operating agreement and that she was a member. Ms. Spring-Robinson testified that she met the other members while working at Noella. She served as Lazy Ibis's chef and baker, starting in 2014, and she worked there for a little over a year. Ms. Spring-Robinson testified that petitioner's only involvement in Lazy Ibis was in the beginning. The other members of Lazy Ibis sought out petitioner for help with paperwork and setting it up. Ms. Spring-Robinson testified that petitioner was not involved in Lazy Ibis's operations, specifically

stating that petitioner did not have the authority to sign checks, hire or fire employees, or make managerial decisions. Ms. Spring-Robinson's testimony was uncontroverted.

41. Petitioner testified at the hearing and recounted his involvement with Lazy Ibis (*see* findings of fact 1 through 4, 7, 16 through 18). During his testimony, he stated that he was not the treasurer of Lazy Ibis. Petitioner also reiterated the statements sworn to in his April 16, 2020, affidavit (*see* finding of fact 34). Petitioner testified to the following: he was not authorized to sign tax returns for Lazy Ibis; he was not responsible for maintaining its books and records; he did not have management authority; he was not a signatory or guarantor on the bank account; he never signed checks; he was neither an employee of, nor hired or fired Lazy Ibis employees; he never directed payment of creditors; and he never claimed any profit or losses from Lazy Ibis on his New York State or federal income tax returns.

42. Petitioner also testified that he reviewed the Division's exhibits, including form DTF-17, and testified that he did not prepare or file the form. This was the first time that petitioner raised this argument to the Division. He explained that he raised the argument now because he only recently reviewed the form, i.e., in preparation for the hearing (*see* finding of fact 32). Petitioner explained that Mr. Bernadine likely listed his address on the form because he allowed Mr. Bernadine to use his residential address while setting up Lazy Ibis. Under cross-examination, which focused on form DTF-17, petitioner testified that he was unsure of how Mr. Bernadine acquired his SSN. Petitioner speculated that Mr. Bernadine could have acquired it from petitioner's laptop, which Mr. Bernadine had access to and contained documents identifying petitioner's SSN. Also under cross-examination, he testified that he did not file any fraud reports or flag his credit report because he meticulously monitors his credit report, and no suspicious activity had occurred. As to why he did not inform the Division that his SSN was

stolen, petitioner explained that he only recently discovered, i.e., from reviewing the form DTF-17 (*id.*), that his SSN was used without his authorization.

43. Petitioner also reviewed the form NYS-45 WEB and stated that he had only reviewed that document in preparation for the hearing. Petitioner testified that he did not file the form NYS-45 WEB. Petitioner also reviewed the DOS webpage showing that he was listed as a person authorized to accept process for Lazy Ibis. Petitioner testified that he did not know that he was listed as such. Petitioner conceded that Mr. Bernadine may have listed petitioner as a person authorized to accept process for Lazy Ibis because he used petitioner's laptop when forming the legal entity. However, he testified that he did not authorize Mr. Bernadine to list him as a person authorized to accept process on behalf of Lazy Ibis.

44. The record also includes an affidavit, sworn on August 14, 2024. Therein, he attested that the term "DTF-17" had no relevance to him prior to this audit because he had no familiarity with the document. Petitioner attested that the Division did not explain to him what form DTF-17 was or its significance. He stated that he did not review the document until he received a copy of the FOIL response on November 21, 2023. Petitioner again attested that he did know that his SSN was used to file the form DTF-17 and that he did not give Mr. Bernadine, or any other person, his SSN or permission to use it for the purposes of submitting documents on behalf of Lazy Ibis. Petitioner attested that had he known what the DTF-17 was previously, he would have informed the Division that he did not file it.

CONCLUSIONS OF LAW

A. Tax Law former § 1133 (a) provided, in part 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 [article 28]” (Tax Law former § 1133 [a], effective April 12, 2018).²

Tax Law former § 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:

“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).

B. As petitioner was not a member of Lazy Ibis (*see* findings of fact 5 and 12), he is not subject to per se liability imposed upon members of a limited liability company (*see Matter of Santo*, Tax Appeals Tribunal, December 23, 2009; *Matter of Bartolomei*, Tax Appeals Tribunal, April 3, 1997). The Division determined that petitioner was a responsible person for Lazy Ibis based upon the documents submitted to it, in particular the forms DTF-17 and DTF-17-ATT, which identified him as treasurer. Petitioner bears the burden of proof to overcome the presumed correctness of the Division’s assessment (*see e.g. Matter of Mera v Tax Appeals Trib.*, 204 AD2d 818, 821 [3d Dept 1994]).

C. The factors relevant in reaching a determination as to whether an individual is a person under a duty to act are well established (*see Matter of Reuben*, Tax Appeals Tribunal, August 27, 2019, citing *Matter of Kieran*, Tax Appeals Tribunal, November 13, 2014). The determination of whether an individual is a person required to collect said tax must be based upon the particular facts of each case (*see id.*; *Matter of Coppola v Tax Appeals Trib.*, 37 AD3d 901, 903 [3d Dept 2007]). Factors to be considered include the individual’s status as a corporate

² Effective April 12, 2018, Tax Law § 1133 (a) was amended to provide relief to limited partners of limited partnerships and members of limited liability companies under certain conditions, which are not relevant herein.

officer (or an officer) in the business; the individual's day-to-day responsibilities; the duties and functions as outlined in the business's organizational documents; knowledge of and control over the financial affairs of the business; the authority to write checks on the business's behalf; responsibility for maintaining the business's books and records; authority to sign sales tax forms; the preparation and filing of sales tax returns; the authority to hire and fire employees; and the individual's economic interest in the business (*see id.*; *Matter of Reuben*; *Matter of Kieran*; *Matter of Ippolito v Commissioner of N.Y. Dept of Taxation & Fin.*, 116 AD3d 1176, 1177-1178 [3d Dept 2014]; *Matter of Luongo*, Tax Appeals Tribunal, July 10, 2012; *Matter of Constantino*, Tax Appeals Tribunal, September 27, 1990).

D. The evidence shows that petitioner met his burden of establishing that he was not an employee or manager of Lazy Ibis. In determining that petitioner was a responsible person for the business, the Division relied solely upon documents filed during the beginning stages of Lazy Ibis, particularly, the form DTF-17. It introduced no other evidence establishing that petitioner was either an employee or a manager of the limited liability company. Petitioner credibly testified that he did not file any of those forms and that his SSN was used without his authorization. The forms DTF-17 and DTF-17-ATT lack signatures, which corroborates his assertion. Moreover, based upon petitioner's truthful testimony and documentary evidence, these forms misrepresent petitioner as Lazy Ibis's treasurer.

Documentary evidence, in the form of Lazy Ibis's operating and commercial lease agreements, indicate the absence of authority, and the credible and uncontroverted testimony of an actual member of the limited liability company, Ms. Spring-Robinson, persuasively confirmed petitioner's lack of position and authority over the business. She testified that petitioner was not involved in its day-to-day operations, lacked check-signing authority, was not a manager, and

could not hire and fire employees. The testimony and documents corroborate petitioner's consistent assertions that: he was not an employee or manager of the business; he held no role in Lazy Ibis's organizational structure; and he lacked authority and access to its operations, management, and finances.

The record establishes that petitioner lacked any involvement or authority over Lazy Ibis's business operations. Petitioner did aid Mr. Bernadine, his friend, in starting up Lazy Ibis, by providing advice, reviewing documents and allowing him to use his laptop and mailing address. Allowing Mr. Bernadine to use his residential address for mailing purposes was reasonable given that Mr. Bernadine's landlord was also his employer, with whom he would be competing with in his new café venture. These factors, alone, do not establish that petitioner was an employee or a manager of Lazy Ibis. Further, they do not rise to the level to be held responsible for the business's sales tax obligations (*see e.g. Matter of Nomura*, Tax Appeals Tribunal, May 12, 2011 [aiding in the startup of a business, i.e., incorporating it, rendering advice and filing the initial corporate return, but proving the absence of all other authority over an entity's operations, was sufficient to establish lack of responsible person status]; *compare Matter of Hersh*, Tax Appeals Tribunal, November 27, 2024 [wherein the taxpayer was held as a responsible person when he aided in starting the business and his name appeared as the only signatory on its checking account]; *Matter of Mohnani*, Tax Appeals Tribunal, September 14, 2023 [wherein the taxpayer was held as a responsible person when she was listed on the business's form DTF-17, signed checks and executed documents on its behalf]).

E. The totality of the record clearly and convincingly demonstrates that petitioner was not an employee or manager of Lazy Ibis, and, therefore, he could not have ensured compliance with Lazy Ibis's sales tax obligations because he lacked any authority or control over the

business. As petitioner has met his burden (*see Matter of Goodfriend*, Tax Appeals Tribunal, January 15, 1998), it must be concluded that he was not a responsible person for Lazy Ibis.

F. The petition of Haftan Eckholdt is granted and the notice of determination, dated February 11, 2020, is cancelled.

DATED: Albany, New York
May 1, 2025

/s/ Alexander Chu-Fong
ADMINISTRATIVE LAW JUDGE