

OHIO BOARD OF TAX APPEALS

Hyun Kyung Kim, Responsible)	
Party of Hyun Kyung Kim, Inc., dba)	
Lisa's Beauty Supply,)	
)	CASE NO. 1998-S-228
Appellant,)	
)	(SALES TAX)
vs.)	
)	DECISION & ORDER
Roger W. Tracy,)	
Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant-	Edward S. Kim, Esq. 300 South Second Street Columbus, Ohio 43215
For the Appellee-	Betty D. Montgomery Attorney General of Ohio By: Barbara L. Barber Assistant Attorney General 30 East Broad Street – 16 th Floor Columbus, Ohio 43215

ENTERED: March 17, 2000

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This matter is considered by the Board of Tax Appeals upon a notice of appeal filed herein on February 23, 1998. The appeal is taken from a final order of the Tax

Commissioner wherein said official found appellant, Hyun Kyung Kim, to be a responsible corporate officer of Hyun Kyung Kim, Inc., dba Lisa's Beauty Supply. ("Lisa's Beauty Supply") The Commissioner found appellant liable for the corporation's sales tax liability for January 1999, July 1993, January 1994 and July through November 1994.

On November 10, 1999, pursuant to assignment and notice duly given, an evidentiary hearing was conducted in this matter. At this hearing, counsel for the parties requested the hearing be postponed to afford appellant additional time to obtain more records and information relating to her personal liability during the period in question. Therefore, the hearing was rescheduled. Subsequently, the parties notified this Board that they no longer wished to appear at a hearing and present additional evidence for this Board's consideration. Accordingly, this matter is submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified to this Board by the Tax Commissioner pursuant to R.C. 5717.02.

In her notice of appeal, appellant sets forth the following assignment of error:

"I would like to present the facts of the case and show proof of fraud by my business partner.

"Each month he withheld the money to pay the taxes and assured me they were taken care of.

"He has committed theft and forgery against the partnership and myself.

"I sincerely implore you to give me the opportunity to meet with you, because this experience has left me very financially burdened."

Before turning to the merits of the instant appeal, we must first set forth the burdens placed upon the parties involved herein. Initially, we note that all sales or uses of tangible personal property in this state are presumed to be taxable. *National Tube Co. v. Glander* (1952), 157 Ohio St. 407, 409.

Furthermore, the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St. 3d 121. It is incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens, Inc. v. Kosydar* (1974), 38 Ohio St.2d 135; *Ohio Fast Freight v. Porterfield* (1972), 29 Ohio St.2d 69; *National Tube v. Glander, supra*. The taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Department Stores v. Lindley* (1983), 5 Ohio St.3d 213. It is with these authorities in mind that we turn to the merits of the instant appeal.

The assessment at issue herein arose pursuant to appellant's asserted liability under R.C. 5739.33 as a "responsible" corporate officer or employee for the delinquent sales tax of Hyun Kyung Kim, Inc., dba Lisa's Beauty Supply. R.C. 5739.33 reads, in pertinent part, as follows:

"If any corporation *** required to file returns and to remit tax due to the state under this chapter fails for any reason to make the filing or payment, any of its employees having control or supervision of or charged with the responsibility of filing returns and making payments, or any of its officers, members or trustees who are responsible for the execution of the corporation's *** fiscal responsibilities, shall be personally liable for such failure."

This section imposes personal liability upon responsible corporate officers when a corporation's sales tax obligation remains unpaid. *Parkinson v. Limbach* (1990), 49 Ohio St.3d 163 Herein, appellant does not deny the fact that she was a responsible corporate officer of Lisa's Beauty Supply during the period in question. Rather, in her notice of appeal, appellant contends that the subject assessment is erroneous because, due to the misrepresentations of her partner, she believed the corporation had paid the subject taxes. For the reasons set forth below, we are unable to find appellant has carried her

burden of providing competent and probative evidence of error on behalf of the Tax Commissioner.

We first note that unsworn statements made through a notice of appeal do not rise to the level of evidence upon which this Board may rely. *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), B.T.A. No. 92-P-880, unreported.

The evidence in the record indicates that appellant had indices of authority sufficient for the Commissioner to conclude that she was a party responsible for the corporation's financial well being. The record includes copies of corporate franchise tax returns and an application for a vendor's license, all of which were signed by appellant, as president of the subject corporation. Appellant has not presented this Board with any evidence which would contradict the Commissioner's finding that she was a responsible corporate officer of Lisa's Beauty Supply during the period in question. While we sympathize with the fact that appellant may have been misled by her business partner, this does not change the fact that she was a responsible corporate officer until December 1994.

Further, to the extent appellant is arguing that her partner is the proper party to be assessed for the subject taxes, we find this contention to be without merit. R.C. 5739.33 provides that any corporate officer may be held personally liable for the entire corporate obligation. See, also, *William Wilson, Officer of COP Enterprises, Inc. v. Tracy* (May 15, 1992), B.T.A. No. 91-K-365, unreported. While the amount owed by the underlying corporation may be satisfied only to the extent of the assessment, such a limitation does not preclude the Tax Commissioner from assessing a corporate officer for the entire amount of the assessment.

Given the record before us, this Board finds the record supports the Commissioner's determination. Without competent and probative evidence to the contrary, we must find that appellant has failed to carry her burden of proof in this matter. Therefore, considering the statutes and case law, the final order of the Tax Commissioner must be, and hereby is affirmed.