

STATE OF LOUISIANA
BOARD OF TAX APPEALS
LOCAL TAX DIVISION

BRIAN VAN HAVERBEKE, and/or
MARGARET VAN HAVERBEKE Individually and
d/b/a CYPRESSWOOD INN AND SUITES,
and CYPRESSWOOD INN AND SUITES, LLC
Petitioners

versus

DOCKET NO. L01284

PLAQUEMINES PARISH GOVERNMENT,
Respondent/Local Collector

JUDGMENT ON MOTION FOR SUMMARY JUDGMENT
WITH REASONS

On August 24, 2023, this matter came before the Board by video conference for hearing on the *Motion for Summary Judgment* filed by Petitioners Brian Van Haverbeke (“Brian”) and/or Margaret Van Haverbeke Individually (“Margaret”) and d/b/a Cypresswood Inn and Suites (“Cypresswood”) and Cypresswood Inn and Suites, LLC (the “LLC”) (collectively, the “Petitioners”), with Local Tax Judge Cade R. Cole, presiding. Appearing before the Board were Katie Cusimano, attorney for the Petitioners, and Joseph Landry, attorney for the Plaquemines Parish Government (“Parish”). At the conclusion of the hearing, the Board took the matter under advisement. The Board now renders Judgment in accordance with the attached Written Reasons.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioners’ Motion for Summary Judgment be and is hereby DENIED.

Judgment Rendered and Signed at Baton Rouge, Louisiana, on this 20th Day of November, 2023.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE.

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REASONS FOR JUDGMENT

ON MOTION FOR SUMMARY JUDGMENT

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BACKGROUND

Petitioners seek a redetermination of a Notice of Assessment (the “Assessment”), for the Tax Periods May 1, 2018, through August 31, 2021 (the “Tax Periods”), for sales, use, and/or occupancy tax, penalties, audit costs, attorney’s fees, and interest in the total amount of \$233,406.52. The Assessment was issued after a sales tax audit of a Hotel operating at 14740 Hwy 23, in Belle Chasse, Louisiana (the “Hotel”). The Assessment is addressed to “Owner’, Brian and/or Margaret Van Haverbeke Individually AND d/b/a Cypresswood Inn and Suites And [sic] Cypresswood Inn and Suites, LLC.”

In their Motion, Petitioners assert that Brian merely assisted with maintenance and repair, was not a manager or operator of the Hotel, was not responsible for filing returns and remitting sales tax, and was not the designated officer for collection and remittance of sales tax. Petitioners attached to their Motion a notarized statement designating Margaret, Brian's mother, as the LLC's responsible officer for sales tax pursuant to La. R.S. 47:337.46(B). This statement was executed on May 31, 2022, after the Tax Periods at issue in this case.

In her deposition, Margaret described herself as the "money" person. After reading the entire deposition transcript, however, it appears that Margaret meant that she provided funds for Hotel operations by issuing checks drawn on the account of "Southland Rental Tools." Margaret apparently did not draw checks on the LLC's account. Nor did she cut checks on her own initiative. She did so when someone requested them from her. Moreover, Margaret testified that she did not know who was responsible for collecting taxes from customers, filing returns, nor who made the decisions as to what to do with the amounts collected. In fact, Margaret testified that she did not know anything about the tax matters related to the operation of the Hotel.

The Parish introduced a Sales & Use Tax Registration Certificate for Cypresswood Inn and Suites that lists Brian Van Haverbeke as the business owner. The Registration Certificate lists no other owners or officers and is dated and signed by Brian on October 14, 2020. A printout of the Business Filing from the Louisiana Secretary of State's website lists "BRIAN VANHAVERBEKE" as the only Officer of the corporation, and describes his title as "Member." The Limited Liability Initial Report, filed with the Secretary of State along with the Articles of Organization for Cypresswood Inn and Suites, LLC, shows "BRIAN VANHAVERBEKE (MEMBER)" as the only manager or member of the business. The Articles of Organization also state that the company is "MEMBER-MANAGED."

DISCUSSION:

Under La. R.S. 47:337.46, a local sales tax collector may hold officers of a corporation, including managers or members of Limited Liability Company as defined in La. R.S. 12:1301(A)(12) and (13), personally liable for taxes collected but not

remitted, as well as for any penalties and interest, if the officers had “direct control or supervision of such taxes,” were responsible for filing returns and remitting taxes, or were designated as the responsible officer by a resolution of the board of directors filed with the Secretary of State.

Officer liability applies to individuals who possess “significant decision-making authority over the corporation's tax matters.”¹ Determining whether a high-ranking officer exercised significant decision-making authority over corporate tax matters and economic decisions is normally a fact-intensive inquiry to be resolved at trial. *See State v. DeJesus*, 94-0261, p.8 (La. 9/16/94), 642 So.2d 854, 857-58. An officer or director is not automatically liable merely because of their status. *Id.*, 94-0261 at p.6, 642 So.2d at 857. A collector can establish an officer’s liability by showing that they had “general control over corporate business affairs,” through their participation in “decisions concerning payment of creditors and disbursement of funds.” *O’Connor v. United States*, 956 F.2d 48, 51 (4th Cir. 1992); *Gephart v. United States*, 818 F.2d 469, 473 (6th Cir. 1987).

The Petitioners’ argument in this case is similar to the argument made by the taxpayer-debtor in *In re Brown*, 18-12688, 2019 WL 645163, at *2 (Bankr. E.D. La. Feb. 14, 2019). In *Brown*, the taxpayer-debtor argued that his wife had all responsibility for the tax matters of an LLC of which he and his wife were members. LDR introduced documents signed by the taxpayer-debtor including tax forms and checks for payment of taxes. Nevertheless, the Court held that the taxpayer-debtor’s testimony that his spouse was the responsible officer was un-contradicted. However, the Court’s holding was based on a finding that the taxpayer-debtor “testified credibly that he had no involvement with the operation of the LLC.” *Id.*, at *3 (emphasis added). The Board cannot pass on the credibility of witness testimony when ruling on the Motion for Summary Judgment.

¹ *Barton v. United States*, 988 F.2d 58, 59 (8th Cir. 1993). The officer liability statute for local sales tax is similar to the officer liability statute for Louisiana state taxes. The state statute is comparable to 26 U.S.C. § 6672. *See DeJesus*, 94-0261, at p.5, 642 So.2d at 856. Because of the similarities in the statutes, federal decisions provide useful, but non-binding, guidance.

Conclusion:

The Petitioners' evidence provides little support for their Motion. More importantly, the Parish has submitted contradictory documentation sufficient to show that there is a genuine dispute of material fact. Although Petitioners may ultimately provide an explanation as to why Brian's name appears on the LLC's reports and tax filings, they will need to do so with credible testimony at a hearing on the merits. The competent summary judgment evidence in the record does not permit the Board to rule in Brian's favor. Accordingly, the Motion will be denied.

Baton Rouge, Louisiana, on this 20^h Day of November, 2023.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE.