

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>MARK D. GOODYEAR</b>	:	<b>DETERMINATION</b>
	:	<b>DTA NO. 830892</b>
for Revision of Determinations or for Refund of Sales	:	
and Use Taxes under Articles 28 and 29 of the Tax	:	
Law for the Periods June 1, 2017 through November	:	
30, 2017 and June 1, 2018 through February 28, 2019.	:	

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Petitioner, Mark D. Goodyear, filed a petition for revision of determinations or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the periods June 1, 2017 through November 30, 2017 and June 1, 2018 through February 28, 2019.

A formal hearing by videoconference was held on June 18, 2024, before Jennifer L. Baldwin, Administrative Law Judge, with all briefs to be submitted by October 22, 2024, which date began the six-month period for the issuance of this determination. Petitioner appeared by SC Law Group (Steven Capobianco, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Kaitlyn Smith, Esq., of counsel).

***ISSUE***

Whether petitioner was personally liable for the sales and use taxes due on behalf of Nawlins Seafood Company, Inc., as a person required to collect and pay such taxes under Tax Law §§ 1131 (1) and 1133 (a), for the periods June 1, 2017 through November 30, 2017 and June 1, 2018 through February 28, 2019.

***FINDINGS OF FACT***

1. Nawlins Seafood Company, Inc. (NSC) operated a restaurant located in Freeport, New York.

2. On its form CT-34-SH, New York S corporation shareholders' information schedule, for tax year 2017, NSC identified four individual shareholders, including petitioner, Mark D. Goodyear, and Ivan Sayles. The form CT-34-SH indicated that petitioner owned 18 percent of NSC and Mr. Sayles owned 51.3 percent.

3. On January 18, 2018, NSC filed form quarterly ST-100, New York State and local quarterly sales and use tax return (form ST-100), for the period June 1, 2017 through August 31, 2017. NSC reported tax due of \$48,385.99, advance payments of \$32,691.00, and a total amount due of \$15,694.99. NSC did not remit payment for the amount due. The form ST-100 indicated that it was electronically submitted by petitioner. On January 30, 2018, the Division of Taxation (Division) issued a notice and demand for payment of tax due (notice and demand) to NSC for the balance due as reported by NSC on its form ST-100, \$15,694.99, plus interest and penalty, for the period June 1, 2017 through August 31, 2017. The Division imposed penalty for late payment/non-payment of the tax due.

4. On January 18, 2018, NSC also filed form quarterly recap for monthly filers ST-810, New York State and local sales and use tax web filed return (form ST-810), for the period September 1, 2017 through November 30, 2017. NSC reported tax due of \$11,211.98, no advance payments, and a total amount due of \$11,211.98. NSC did not remit payment for the amount due. The form ST-810 indicated that it was electronically submitted by petitioner. On January 30, 2018, the Division issued a notice and demand to NSC for the total amount due as reported by NSC on its form ST-810, \$11,211.98, plus interest and penalty, for the period

September 1, 2017 through November 30, 2017. The Division imposed penalty for late payment/non-payment of the tax due.

5. On September 20, 2018, NSC filed form ST-810 for the period June 1, 2018 through August 31, 2018. NSC reported tax due of \$29,819.82, advance payments of \$8,490.00, and a total amount due of \$21,329.82. NSC did not remit payment for the amount due. On October 2, 2018, the Division issued a notice and demand to NSC for the total amount due as reported by NSC on its form ST-810, \$21,329.82, plus interest and penalty, for the period June 1, 2018 through August 31, 2018. The Division imposed penalty for late payment/non-payment of the tax due.

6. On December 20, 2018, NSC filed form ST-810 for the period September 1, 2018 through November 30, 2018. NSC reported tax due of \$3,730.31, advance payments of \$3,730.00, and a total amount due of \$0.31, which NSC paid. On January 4, 2019, the Division issued a notice and demand to NSC for penalty of \$50.00 for failure to timely file a form part-quarterly ST-809, New York State and local sales and use tax return for part-quarterly (monthly) filers (form ST-809), by the November 20, 2018 due date.

7. On March 20, 2019, NSC filed form ST-810 for the period December 1, 2018 through February 28, 2019. NSC reported no tax due. On April 3, 2019, the Division issued a notice and demand to NSC for penalty of \$100.00 for failure to timely file two forms ST-809 by the January 22, 2019 and February 20, 2019 due dates.

8. On July 24, 2019, the Division issued to petitioner the following notices of determination (notices):

Notice Number	Tax Period Ended	Tax Asserted	Interest	Penalty
L-050313153	08/31/17	\$15,694.99	\$4,386.17	\$4,427.69 <sup>1</sup>
L-050313152	11/30/17	\$11,211.98	\$3,208.86	\$3,495.32
L-050313151	08/31/18	\$21,329.82	\$2,905.16	\$4,365.26
L-050313150	11/30/18	\$0.00	\$0.00	\$50.00
L-050313149	02/28/19	\$0.00	\$0.00	\$100.00

Each of the notices stated that sales tax was asserted against petitioner as an officer/responsible person of NSC in accordance with Tax Law §§ 1138 (a), 1131 (1), and 1133 for the periods June 1, 2017 through November 30, 2017 and June 1, 2018 through February 28, 2019 (periods at issue).

9. The Division issued the notices to petitioner as a responsible person of NSC based on its review of documents that were received by the Division. The Division reviewed a business account signature card for NSC with Bethpage Federal Credit Union (BFCU). The signature card, dated February 10, 2017, was signed by petitioner, listed his title as chief operating officer, and indicated that petitioner was an authorized signer on the account. The signature card also indicated that Mr. Sayles was an authorized signer on the account and listed his title as president.

The Division reviewed a corporate resolutions form NSC executed with BFCU. The form, dated February 10, 2017, was signed by petitioner and listed his title as chief operating officer. The form indicated that petitioner was authorized on behalf of NSC to: (a) open, modify, or close deposit account(s); (b) transact on accounts, including write checks and initiate payments; (c) secure business debit card(s) and authorize cardholders; and (d) apply for and obtain loans, secure business credit card(s) and authorize cardholders. The form also indicated that Mr. Sayles was authorized to exercise the same powers on behalf of NSC.

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<sup>1</sup> Notice number L-050313153 shows assessment payments or credits of \$1,908.10.

10. The Division also reviewed an online services business account creation form for NSC. The form indicated that petitioner electronically submitted the form to the Division on June 22, 2017 and, by doing so, certified that he was authorized to create the account for NSC and act as the master administrator for the account. The Division reviewed a payment form for NSC. The form indicated that petitioner electronically submitted a \$50.00 payment to the Division on behalf of NSC on January 18, 2018. The form indicated that the payment was made from the business checking account of NSC at BFCU.

11. The Division reviewed 11 sales tax returns of NSC. Each return indicated that petitioner electronically submitted the return to the Division as follows:

Form	Date Submitted	Period
ST-100	08/22/17	03/01/17-05/31/17
ST-100	01/18/18	06/01/17-08/31/17
ST-809	01/18/18	09/01/17-09/30/17
ST-809	01/18/18	10/01/17-10/31/17
ST-810	01/18/18	09/01/17-11/30/17
ST-809	01/18/18	12/01/17-12/31/17
ST-809	02/20/18	01/01/18-01/31/18
ST-810	03/19/18	12/01/17-02/28/18
ST-809	04/20/18	03/01/18-03/31/18
ST-809	05/21/18	04/01/18-04/30/18
ST-810	06/20/18	03/01/18-05/31/18

The form ST-100, submitted on August 22, 2017, and form ST-810, submitted on June 20, 2018, both indicated that petitioner electronically submitted payments to the Division on the same dates from the business checking account of NSC at BFCU.

12. Petitioner requested a conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the notices. By conciliation order, dated January 28, 2022, BCMS sustained the notices.

13. Petitioner timely filed a petition in protest of the conciliation order on March 25, 2022. In the petition, petitioner alleged that he was an investor in NSC who helped with administrative functions to keep NSC operating.

14. Brenda Cannizzaro, Tax Compliance Assistant Manager, testified at the hearing on behalf of the Division. She testified that she reviewed the documents noted in findings of fact 9, 10 and 11 and approved the determination that petitioner should be assessed as a responsible person of NSC. Ms. Cannizzaro also explained that a business can have more than one responsible person and, in her experience, it was common to find multiple responsible persons of a business.

15. At the hearing, petitioner testified that he became involved in NSC in 2017 and his involvement ended “[i]n the earlier part of 2019.” He stated that he was approached by Mr. Sayles about investing in NSC and became an investor. Petitioner testified that he progressively became more involved in the day-to-day operations of NSC, and explained that:

“I was involved again not from the beginning, but after a point when it became clear that we were spending a lot of money on outside accounting, outside services. And I had time and experience so I agreed to help with some of the office responsibilities and in paying bills and helping with administrative staff that he had and organizing them to do the jobs more efficiently.”

Petitioner testified that he took over the accounting responsibilities for NSC in “probably the latter part of 2017 or the earlier part of 2018.”

16. Petitioner further testified that he organized NSC’s accounting systems in QuickBooks, paid bills, and signed checks. He stated that he was not authorized to make payments or withdraw money from NSC’s bank accounts without authorization from Mr. Sayles. Petitioner believed that he started filing NSC’s tax returns in the latter part of 2017 but was unsure because he did not have any records from NSC, which were all maintained by NSC.

Petitioner also testified that he and Mr. Sayles set up NSC's online services business account with the Division and that he and Mr. Sayles had access to all the same accounts and systems.

17. Petitioner testified that BFCU suggested the title that was listed for him on NSC's business account signature card. He also testified that, despite the powers listed for him on the business resolutions form, his specific authority was to facilitate payments, that is, sign checks authorized by Mr. Sayles for payments to be made.

### ***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 § 1131 (1) in turn defined 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 [article 28]; and any member of a partnership or limited liability company."

B. Whether a person is a responsible officer must be determined based on the particular facts of each case (*see Matter of Coppola v Tax Appeals Trib.*, 37 AD3d 901, 903 [3d Dept 2007]; *Matter of Hall*, Tax Appeals Tribunal, March 22, 1990, *confirmed* 176 AD2d 1006 [3d Dept 1991]). Factors outlined in the Division's regulations include whether the person was authorized to sign the corporation's tax returns, was responsible for maintaining the corporate books or was permitted to generally manage the corporation (*see* 20 NYCRR 526.11 [b] [2]).

The Tax Appeals Tribunal has stated that:

"[t]he question to be resolved in any particular case is whether the individual had or could have had sufficient authority and control over the affairs of the

corporation to be considered a responsible officer or employee. The case law and the decisions of this Tribunal have identified a variety of factors as indicia of responsibility: the individual's status as an officer, director, or shareholder; authorization to write checks on behalf of the corporation; the individual's knowledge of and control over the financial affairs of the corporation; authorization to hire and fire employees; whether the individual signed tax returns for the corporation; the individual's economic interests in the corporation" (*Matter of Constantino*, Tax Appeals Tribunal, September 27, 1990 [citations omitted]).

C. The evidence in the record, including petitioner's own testimony, shows that petitioner had or could have had sufficient authority and control over the affairs of NSC to be considered a responsible person. Petitioner held an 18 percent ownership interest in NSC. He signed NSC's bank account signature card and corporate resolutions form as chief operating officer of NSC. He was authorized to write checks and initiate payments from NSC's bank account. He submitted tax payments to the Division from NSC's business account. He and Mr. Sayles created NSC's online services business account with the Division and petitioner was the account's master administrator. Petitioner filed sales tax returns on behalf of NSC during and for the periods at issue.

While petitioner claims that he was only an investor in NSC, his testimony demonstrates a high level of involvement with NSC during the periods at issue. Petitioner testified that he became progressively more involved in the day-to-day operations of NSC from 2017 until 2019. He stated that he took over the accounting responsibilities for NSC in late 2017 or early 2018. He also confirmed that he wrote checks and filed tax returns on behalf of NSC. Petitioner not only had the authority to act on behalf of NSC, but he did in fact act on behalf of NSC. Therefore, petitioner had sufficient authority and control over the affairs of NSC to be considered a responsible person (*see Matter of Kropf*, Tax Appeals Tribunal, March 21, 1991).



D. Petitioner's contention that it was Mr. Sayles who was responsible for paying NSC's bills and taxes is unavailing. It is well settled that more than one person can be held liable as a responsible person under Tax Law § 1133 (a) and liability is joint and several (*see Matter of Blodnick v State Tax Commn.*, 124 AD2d 437, 438 [3d Dept 1986]). Merely pointing to another person and alleging that such person is a responsible person does not establish that petitioner is not a responsible person as well (*see Matter of Hurley*, Tax Appeals Tribunal, July 16, 1998; *Matter of LaPenna*, Tax Appeals Tribunal, March 14, 1991). 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 Mr. Sayles may be responsible for NSC's sales tax obligations does not relieve petitioner of liability.

E. The petition of Mark D. Goodyear is denied, and the notices of determination, dated July 24, 2019, are sustained.

DATED: Albany, New York  
April 17, 2025

/s/ Jennifer L. Baldwin  
ADMINISTRATIVE LAW JUDGE