

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for)
 Reconsideration of Successor Liability)
 Under the Sales and Use Tax Law of:)
 BEVERLY BAGELS, INC., dba) Account Number SR AS 100-970090
 17th Street Café & Bakery) Case ID 521440
 Petitioner) Santa Monica, Los Angeles County

Type of Business: Restaurant
 Liability period: 04/01/05 – 01/11/09

<u>Item</u>	<u>Disputed Amount</u>
Successor liability	\$117,618
Tax determined and proposed to be redetermined	\$120,542.87
Less amount paid by predecessor	<u>- 2,925.00</u>
Balance, protested (no interest accruing)	<u>\$117,617.87</u>

UNRESOLVED ISSUE

Issue: Whether petitioner is liable as a successor to Montana Avenue Restaurant, Inc. We find petitioner is liable as a successor.

Petitioner purchased a restaurant from Montana Avenue Restaurant, Inc. (Montana Avenue) (SR AS 101-189279) and began operating the business on March 18, 2009. At the time of the sale of the business, Montana Avenue had an unpaid liability as a successor to 17th Street Café, Inc. (SR AS 18-731326). (The amount of that liability has been adjusted to \$120,542.87, the amount of Montana Avenue’s purchase price of the business, with no interest accruing.) On June 9, 2009, the escrow holder submitted a request for a tax clearance certificate for Montana Avenue, and the Sales and Use Tax Department (Department) issued a “Notice of Amounts Due and Conditional Release,” showing a total amount due from Montana Avenue of \$800,000. The Department concluded that petitioner was liable as a successor for the amounts due from Montana Avenue and issued the Notice of Successor Liability in dispute.

1 Petitioner protests the successor liability on the basis that Montana Avenue should not have
2 been held liable as a successor for the liabilities incurred by 17th Street Café, Inc. Montana Avenue
3 disputed its successor liability on the basis that it did not purchase 17th Street Café, Inc., but instead
4 acquired it through foreclosure of a security interest. Montana Avenue stated that its owners, Jack
5 Srebnik and Jane Srebnik, had sold the café to three employees, who operated the café for a period and
6 then began to default on the payments due according to a promissory note. The Srebniks had retained
7 the stock certificates for 17th Street Café, Inc. as collateral, and they foreclosed on the shares in January
8 2009. The buyers (the prior employees) voluntarily returned the restaurant to the Srebniks, who
9 formed the corporation Montana Avenue Restaurant, Inc. Montana Avenue entered into an agreement
10 with 17th Street Café, Inc., pursuant to which Montana Avenue purchased the assets of 17th Street Café,
11 Inc. for total consideration of \$120,542.87, representing the assumption of debts to third parties. In a
12 D&R regarding the appeal of Montana Avenue, we found that the Srebniks, rather than Montana
13 Avenue, acquired the stock of 17th Street Café, Inc. through foreclosure, and that the sale of 17th Street
14 Café, Inc. to Montana Avenue was a separate transaction. We further concluded that Montana Avenue
15 was liable as a successor to 17th Street Café, Inc. to the extent of the purchase price. The Board heard
16 Montana Avenue's appeal on February 27, 2013, and ordered the tax redetermined to \$120,542.87,
17 with no interest accruing.¹

18 The evidence establishes, and petitioner does not dispute, that it purchased the business from
19 Montana Avenue and took possession of the business on March 18, 2009. Although the escrow
20 instructions were amended June 1, 2009, with instructions for the escrow holder to withhold proceeds
21 from the sale until it had obtained a tax clearance certificate from the Board, the request for a tax
22 clearance was not made until June 9, 2009, after the sale of the business had occurred. There is also no
23 dispute that the Department responded with a notice indicating that Montana Avenue owed \$800,000
24 to the Board. However, petitioner did not withhold from the purchase an amount sufficient to cover
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27 ¹ Although this matter and the appeal of Montana Avenue were linked for purposes of a Board hearing, petitioner (Beverly
28 Bagels, Inc.) had filed a settlement proposal which was under consideration by the Settlement Division when the Board
hearing for the Montana Avenue appeal was scheduled.

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Montana Avenue’s unpaid tax liabilities as a successor to 17th Street Café, Inc. Thus, we find petitioner is liable as a successor for Montana Avenue’s unpaid sales and use tax liabilities.

OTHER MATTERS

None.

Summary prepared by Deborah A. Cumins, Business Taxes Specialist III