



FILED
GA. TAX TRIBUNAL

BEFORE THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

JUL 23 2015

DOUGLASVILLE HOSPITALITY, INC.,

Petitioner,

v.

LYNNETTE T. RILEY, in her Official
Capacity as COMMISSIONER, GEORGIA
DEPARTMENT OF REVENUE,

Respondent.

Yvonne Bouras
Yvonne Bouras
Tax Tribunal Administrator

TAX TRIBUNAL DOCKET
NO.: TAX - S&UT - 1526300

DECISION

2015 – 5, Ga. Tax Tribunal, July 23, 2015

I. INTRODUCTION

Douglasville Hospitality, Inc. (“Petitioner”) disputes the Department of Revenue’s (“Department”) issuance of a State Tax Execution after the Department assessed sales taxes, interest, and penalties in the amount of \$88,223.83 against the Petitioner as the successor to Vanmali Investments, Inc. (“Vanmali”). The Department moved for summary judgment on May 13, 2015. The Petitioner filed a Countermotion for Summary Judgment on June 11, 2015, which the Department responded to on June 23, 2015. A hearing on the motions was held on July 14, 2015.

For the reasons stated herein, the Commissioner’s Motion for Summary Judgment is **Granted** and the Petitioner’s Motion for Summary Judgment is **Denied**.

II. FINDINGS OF UNDISPUTED MATERIAL FACT

The facts in this matter are not disputed and the record reflects that the parties entered into a Stipulation of the following undisputed facts:

1.

On June 16, 2014, the Department issued an Official Assessment and Demand for Payment Letter to Petitioner under the provisions of O.C.G.A. § 48-8-46 assessing sales and use taxes, penalties and interest against Petitioner as a successor to Vanmali. See Affidavit of Gezahegne Worku ¶ 3 (hereinafter referred to as Worku Affidavit) and Respondent Exhibit 1 attached thereto; see also Petition and Answer ¶¶ 6.a., 6.j., 7z. and Letter ID 0200890592 attached to the Petition.

2.

Vanmali had operated a hotel located at 8304 Cherokee Boulevard, Douglasville, Georgia. See Petition and Answer ¶ 7.a. Vanmali sold the hotel to Petitioner on April 1, 2011, for \$2,341,000.00. See Petition and Answer ¶ 7.x and Answer ¶ 9(g) and Exhibit B attached thereto.

3.

The Department issued the assessment against Petitioner because Petitioner did not obtain a receipt or certificate showing that the taxes, interest, and penalties owed by Vanmali had been paid and were not due. See Worku Affidavit ¶ 3. Furthermore, the Revenue Commissioner (“the Commissioner”) has not issued a receipt or a certificate that indicates that the sales taxes owed by Vanmali and assessed against Petitioner have been paid or that sales and use taxes are not due, and the outstanding sales taxes, penalties and interest currently owed to the Department total \$96,737.11. Id.

4.

On November 12, 2014, the Department notified Petitioner that a State Tax Execution had been issued against Petitioner for sales and use taxes. See Worku Affidavit ¶ 4 and

Respondent Exhibit 2 attached thereto. The Department also issued State Tax Execution REV 140325463 against Petitioner and recorded this state tax execution on January 1, 2015 with the Clerk of the Superior Court of Douglas County. See Worku Affidavit ¶ 4 and Respondent Exhibit 3 attached thereto. In this action, Petitioner is disputing the Department's issuance of the State Tax Execution. See Petition and Answer ¶ 1.

5.

A taxpayer who is required to file sales and use tax returns on a monthly basis is required to file a Sales and Use Tax Return, ST-3 Form, on the 20th day of the following month. See Worku Affidavit ¶ 5; see also Petition and Answer ¶ 6.f.

6.

On July 19, 2009, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending June 30, 2009 that reflected that Vanmali owed the Department sales tax in the amount of \$3,652.05. See Worku Affidavit ¶ 6 and Respondent Exhibit 4 attached thereto.

7.

On August 19, 2009, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending July 31, 2009 that reflected that Vanmali owed the Department sales tax in the amount of \$3,719.38. See Worku Affidavit ¶ 7 and Respondent Exhibit 5 attached thereto.

8.

On December 14, 2009 the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, a late payment penalty, an electronic filing penalty, and

interest in the amount of \$401.35 for the taxable period ending July 31, 2009. See Worku Affidavit ¶ 8 and Respondent Exhibit 6 attached thereto.

9.

On September 20, 2009, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending August 31, 2009 that reflected that Vanmali owed the Department sales tax in the amount of \$2,363.79. See Worku Affidavit ¶ 9 and Respondent Exhibit 7 attached thereto.

10.

On December 28, 2009, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for an electronic filing mandatory penalty in the amount of \$243.48 for the taxable period ending August 31, 2009. See Worku Affidavit ¶ 10 and Respondent Exhibit 8 attached thereto.

11.

On October 20, 2009, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending September 30, 2009 that reflected that Vanmali owed the Department sales tax in the amount of \$2,277.60. See Worku Affidavit ¶ 11 and Respondent Exhibit 9 attached thereto.

12.

On April 5, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for an electronic payment mandatory penalty in the amount of \$232.40 for the taxable period ending September 30, 2009. See Worku Affidavit ¶ 12 and Respondent Exhibit 10 attached thereto.

13.

On December 19, 2009, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending November 30, 2009 that reflected that Vanmali owed the Department sales tax in the amount of \$1,809.15. See Worku Affidavit ¶ 13 and Respondent Exhibit 11 attached thereto.

14.

On April 5, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for an electronic payment mandatory penalty in the amount of \$130.56 for the taxable period ending November 30, 2009. See Worku Affidavit ¶ 14 and Respondent Exhibit 12 attached thereto.

15.

On February 25, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending December 31, 2009 that reflected that Vanmali owed the Department sales tax in the amount of \$1,861.28. See Worku Affidavit ¶ 15 and Respondent Exhibit 13 attached thereto.

16.

On April 27, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for a late filing penalty and interest of \$223.34 for the taxable period ending December 31, 2009. See Worku Affidavit ¶ 16 and Respondent Exhibit 14 attached thereto.

17.

On March 22, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending January 31, 2010 that reflected that Vanmali owed the

Department sales tax in the amount of \$1,441.35. See Worku Affidavit ¶ 17 and Respondent Exhibit 15 attached thereto.

18.

On June 1, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for a late filing penalty and interest in the amount of \$172.94 for the taxable period ending January 31, 2010. See Worku Affidavit ¶ 18 and Respondent Exhibit 16 attached thereto.

19.

On March 19, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending February 28, 2010 that reflected that Vanmali owed the Department sales tax in the amount of \$1,939.60. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 19 and Respondent Exhibit 17 attached thereto.

20.

On June 1, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalties, and interest due in the amount of \$2,387.40 for the taxable period ending February 28, 2010. See Worku Affidavit ¶ 20 and Respondent Exhibit 18 attached thereto.

21.

On May 19, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending March 31, 2010 that reflected that Vanmali owed the Department sales tax in the amount of \$2,933.99. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 21 and Respondent Exhibit

19 attached thereto.

22.

On July 30, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalties, and interest due in the amount of \$3,638.15 for the taxable period ending March 31, 2010. See Worku Affidavit ¶ 22 and Respondent Exhibit 20 attached thereto.

23.

On May 19, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending April 30, 2010 that reflected that Vanmali owed the Department sales tax in the amount of \$2,411.66. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 23 and Respondent Exhibit 21 attached thereto.

24.

On July 30, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalty, and interest due in the amount of \$2,933.81 for the taxable period ending April 30, 2010. See Worku Affidavit ¶ 24 and Respondent Exhibit 22 attached thereto.

25.

On June 20, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending May 31, 2010 that reflected that Vanmali owed the Department sales tax in the amount of \$3,257.23. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 25 and Respondent Exhibit 23 attached thereto.

26.

On September 3, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalty, and interest due in the amount of \$3,951.76 for the taxable period ending May 31, 2010. See Worku Affidavit ¶ 26 and Respondent Exhibit 24 attached thereto.

27.

On July 1, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending June 30, 2010 that reflected that Vanmali owed the Department sales tax in the amount of \$ 4,715.93. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 27 and Respondent Exhibit 25 attached thereto.

28.

On October 1, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalty and interest due in the amount of \$5,681.70 for the taxable period ending June 30, 2010. See Worku Affidavit ¶ 28 and Respondent Exhibit 26 attached thereto.

29.

On September 17, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending July 31, 2010 that reflected that Vanmali owed the Department sales tax in the amount of \$5,801.79. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 29 and Respondent Exhibit 27 attached thereto.

30.

On November 19, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalties and interest due in the amount of \$6,846.09 for the taxable period ending July 31, 2010. See Worku Affidavit ¶ 30 and Respondent Exhibit 28 attached thereto.

31.

On September 17, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending August 31, 2010 that reflected that Vanmali owed the Department sales tax in the amount of \$3,773.63. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 31 and Respondent Exhibit 29 attached thereto.

32.

On December 6, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalty, and interest in the amount of \$4,564.20 due for the taxable period ending August 31, 2010. See Worku Affidavit ¶ 32 and Respondent Exhibit 30 attached thereto.

33.

On October 19, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending September 30, 2010 that reflected that Vanmali owed the Department sales tax in the amount of \$2,800.01. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 33 and Respondent Exhibit 31 attached thereto.

34.

On December 30, 2010, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalty and interest due in the amount of \$3,407.15 for the taxable period ending September 30, 2010. See Worku Affidavit ¶ 34 and Respondent Exhibit 32 attached thereto.

35.

On November 20, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending October 31, 2010 that reflected that Vanmali owed the Department sales tax in the amount of \$2,706.25. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 35 and Respondent Exhibit 33 attached thereto.

36.

On February 2, 2011, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalty and interest due in the amount of \$3,292.12 for the taxable period ending October 31, 2010. See Worku Affidavit ¶ 36 and Respondent Exhibit 34 attached thereto.

37.

On December 16, 2010, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending November 30, 2010 that reflected that Vanmali owed the Department \$2,608.96. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 37 and Respondent Exhibit 35 attached thereto.

38.

On March 1, 2011, the Department issued an Official Assessment and Demand for

Payment Letter to Vanmali for sales tax, penalty, and interest due in the amount of \$3,173.82 for the taxable period ending November 30, 2010. See Worku Affidavit ¶ 38 and Respondent Exhibit 36 attached thereto.

39.

On January 19, 2011, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending December 31, 2010 that reflected that Vanmali owed the Department sales tax in the amount of \$2,190.64. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 39 and Respondent Exhibit 37 attached thereto.

40.

On March 29, 2011, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalty, and interest due in the amount of \$2,664.92 for the taxable period ending December 31, 2010. See Worku Affidavit ¶ 40 and Respondent Exhibit 38 attached thereto.

41.

On February 20, 2011, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending January 31, 2011 that reflected that Vanmali owed the Department sales tax in the amount of \$2,505.14. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 41 and Respondent Exhibit 39 attached thereto.

42.

On May 4, 2011, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalty and interest due in the amount of \$3,047.50 for

the taxable period ending January 31, 2011. See Worku Affidavit ¶ 42 and Respondent Exhibit 40 attached thereto.

43.

On March 1, 2011, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending February 28, 2011 that reflected that Vanmali owed the Department sales tax in the amount of \$2,519.32. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 43 and Respondent Exhibit 41 attached thereto.

44.

On May 31, 2011, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalty, and interest due in the amount of \$3,064.76 for the taxable period ending February 28, 2011. See Worku Affidavit ¶ 44 and Respondent Exhibit 42 attached thereto.

45.

On April 18, 2011, Vanmali filed a Form ST-3 sales and use tax return with the Department for the taxable period ending March 31, 2011 that reflected sales tax due to the Department in the amount of \$2,343.52. Vanmali did not remit to the Department the sales tax reported as being due on the return. See Worku Affidavit ¶ 45 and Respondent Exhibit 43 attached thereto.

46.

On June 27, 2011, the Department issued an Official Assessment and Demand for Payment Letter to Vanmali for sales tax, penalty and interest due in the amount of \$2,850.88 for the taxable period ending March 31, 2011. See Worku Affidavit ¶ 46 and Respondent Exhibit 44

attached thereto.

47.

On September 9, 2011 Vanmali filed with the Department its last or final sales and use tax return for the taxable period ending September 30, 2011. See Worku Affidavit ¶ 47 and Respondent Exhibit 45 attached thereto.

48.

On April 23, 2014, the Department issued State Tax Execution REV 140295774 against Vanmali. The Department recorded this state tax execution with the Clerk of the Superior Court of Douglas County on September 12, 2014. See Worku Affidavit ¶ 48 and Respondent Exhibit 46 attached thereto.

III. STANDARD OF REVIEW ON SUMMARY JUDGMENT

The standards governing summary judgment are well established. To prevail at summary judgment under O.C.G.A. § 9-11-56, the moving party must demonstrate that there is no genuine issue of material fact as to each element of its claim and that the undisputed facts, when viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. O.C.G.A. 9-11-56(c); Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991); Zantzinger v. Commissioner, 2014-2 Ga. Tax Tribunal, Jan. 31, 2014. Proceedings before the Tribunal are *de novo* in nature, and the evidence on the issues in a hearing before the Tribunal is not limited to the evidence presented to or considered by the Department prior to the Department's decision. O.C.G.A. § 50-13A-14; see Ga. Comp. R. & Regs. 616-1-3-.11 as adopted in Standing Order dated June 1, 2013.

IV. SUCCESSOR LIABILITY REGARDING GEORGIA SALES AND USE TAXES

The concept of successor liability regarding sales and use taxes, coupled with interest and

penalties in connection therewith, is authorized in O.C.G.A. § 48-8-46, which states:

48-8-46. Final return and payment upon sale of or quitting business; withholding of sufficient amount of purchase money by successor; effect of failure to withhold.

If any dealer liable for any tax, interest, or penalty imposed by this article sells out his business or stock of goods or equipment or quits the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business. The dealer's successor or assigns, if any, shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due and unpaid until the former owner produces either a receipt from the commissioner showing that the taxes, interest, and penalties have been paid or a certificate from the commissioner stating that no sales and use taxes, interest, or penalties are due. If the purchaser of a business or stock of goods or equipment fails to withhold the purchase money as required by this Code section, he shall be personally liable for the payment of any sales and use taxes, interest, and penalties accruing and unpaid by any former owner or assignor. The personal liability of the purchaser in such a case shall not exceed the amount of the total purchase money, but the property being transferred shall in all cases be subject to the full amount of the tax lien arising from the delinquencies of the former owner.

V. PERIOD OF LIMITATION FOR ASSESSMENT OF TAXES

48-2-49. Periods of limitation for assessment of taxes.

(a) Except as otherwise provided in this Code section or this title, the amount of any tax imposed by this title may be assessed at any time.

(b) Except as otherwise provided by subsection (c) of this Code section or by this title, in the case where a return or report is filed, the amount of any tax imposed by this title shall be assessed within three years after the return or report was filed. For purposes of this subsection, a return or report filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. If an extension of time for filing a return or report is granted and the return or report is filed on or before the extended date, the return or report shall be considered as filed on the extended due dates.

(c) Except as otherwise provided by this title, in the case of a false or fraudulent return or report filed with the intent to evade tax or a failure to file a return or report, the amount of any tax imposed by this title may be assessed at any time.

(d) Where, before the expiration of the time prescribed in this Code section for the assessment of any tax imposed by this title, both the commissioner and the person subject to assessment have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period. The commissioner is authorized in any

such agreement to extend similarly the period within which a claim for refund may be filed.

(e) If a claim for refund of taxes paid for any taxable period is filed within the last six months of the period during which the commissioner may assess the amount of taxes, the assessment period is extended for a period of six months beginning on the day the claim for refund is filed.

(f) No action without assessment shall be brought for the collection of any tax after the expiration of the period for assessment. (Ga. L. 1937-38, Ex. Sess., p. 77, § 33; Code 1933, § 91A-244, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1350, § 1.)

VI. CONCLUSIONS OF LAW

Petitioner contends that the assessments filed by Vanmali on the requisite ST-3 Forms or electronically, which Respondent subsequently reassessed by adding interest and penalties, constitute returns or reports within the meaning of O.C.G.A. § 48-2-49(b), thus triggering the running of the three-year statutory period contemplated thereby. Petitioner further contends that since O.C.G.A. § 48-2-49(b) does not specify who shall file the reports or returns, the statute should be construed most favorably on behalf of the taxpayer and thus bar personal liability of Petitioner as a successor to Seller (Vanmali) within the meaning of O.C.G.A. § 48-8-46.

Respondent conversely contends that O.C.G.A. § 48-2-49(c) should be the applicable provision of O.C.G.A. § 48-2-49, since no report or return was ever filed by the Petitioner in connection with the liability Respondent assessed against Petitioner as a successor. Respondent further contends that O.C.G.A. § 48-8-46 does not contain a statute of limitations provision, and if the Legislature intended to promulgate a statute of limitations in connection with successor liability, such a statute of limitations provision would be contained within O.C.G.A. § 48-8-46 or elsewhere in the Georgia Code with specific reference to successor liability for sales and use taxes.

Respondent further contends that the Legislature did, however, include a "safe harbor"

for a purchaser of a business potentially holding harmless and exculpating a purchaser from successor liability with the provision requiring the seller to obtain for purchaser a certificate from the Commissioner of the Department stating that no sales and use taxes are due or if any are due, withholding the amount due from the purchase money of the contemplated purchase. See O.C.G.A. § 48-8-46. The Legislature further limited a purchaser's successor liability to the amount of the total purchase money for the business property being transferred. Id.

Indeed, O.C.G.A. § 48-8-46 states in part that if any purchaser "fails to withhold the purchase money as required by this code section, he shall be personally liable for the payment of any sales and use taxes, interest, and penalties accruing and unpaid by any former owner or assignor." O.C.G.A. § 48-8-46. The statute further provides that any purchaser of a business can insulate himself or herself from successor liability by either obtaining a certificate from the Georgia Revenue Commissioner that no sales or use taxes are due and payable by the seller or other former owner or withholding from the purchase money of any such purchase of a business an amount equal to the sum of any sales or use taxes, interest and penalty accrued and unpaid by the Seller or any other former owner of the business. Id.

In this case the Petitioner and Respondent both stipulated to the fact that Petitioner did purchase the business of Seller (Vanmali). Both Petitioner and Respondent stipulate that Petitioner did not withhold any of the purchase money in accordance with O.C.G.A. § 48-8-46, nor did Purchaser (Petitioner) require the Seller, (Vanmali) to obtain a certificate from the Commissioner stating that no sales and use taxes, interest or penalties were due from Seller (Vanmali) or other former owners of the business thereby initially originating and perfecting the personal liability of Purchaser (Petitioner) for any sales and use taxes, interest and penalties accrued and unpaid by any former owner or assignor of the business. Accordingly, the Petitioner

did not take advantage of the statutory safe harbor, and is personally liable as a successor.

The Petitioner in this case relies solely upon O.C.G.A. § 48-2-49(b) to exculpate and save Petitioner from the personal liability aforementioned herein. O.C.G.A. § 48-2-49(b) provides in part that taxes imposed by this title shall be assessed within three (3) years after the return or report was filed. Both the Petitioner and Respondent in this case stipulate that Seller (Vanmali) self-assessed himself for all applicable sales and use taxes within three (3) years of reports or returns filed and that the Department also assessed the Seller (Vanmali) for all applicable sales and use taxes, interest and penalties within three years of reports or returns filed within the meaning of O.C.G.A. § 48-2-49(b).

The successor personal liability conditionally imposed by O.C.G.A. § 48-8-46 is derivative in scope and does not constitute a new tax for assessment purposes. “Under a proper understanding of the function and nature of an assessment, it is clear that it is *the tax* that is assessed, not the taxpayer.” United States v. Galletti, 541 U.S. 114, 122-23 (2004) (holding the Government is not required to make separate assessments of single tax debt against persons or entities secondarily liable for the debt in order for the statute of limitations for debt collection to apply). For example, Georgia’s assessment statute of limitations states “the amount of any *tax* imposed by this title may be assessed at any time.” O.C.G.A. 48-2-49(a) (emphasis added). The statute of limitations attaches to the debt as a whole, not to any individual taxpayer. Galletti, 541 U.S. at 123. Once the tax was properly assessed, the Respondent was not required to “duplicate its efforts by separately assessing the same tax against individuals or entities who are not the actual taxpayers but are, by reason of state law, liable for payment of the taxpayer’s debt.” Id. Thus, the tax was properly assessed against Vanmali, thereby rendering the statute of limitations for collection of the debt seven years as to both Vanmali and the Petitioner. O.C.G.A. § 48-3-

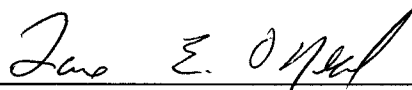
21(1); Oxford v. Jessup, 101 Ga. App. 612, 619-20 (1960).

The Petitioner essentially asks the Tribunal to read a successor liability statute of limitations into O.C.G.A. § 48-2-49 where none actually exists. The statute provides a general rule that tax may be assessed at any time and lists certain exceptions in which a statute of limitations applies. Where the General Assembly exempts certain instances from a general rule, the statutory construction maxim *expressio unius est exclusio alterius*, or to express one thing is to exclude another, leads to the conclusion that the General Assembly did not intend to apply a statute of limitations to successor liability. See, e.g., Rabun Gap-Nacoochee Sch. v. Thomas, 228 Ga. 231 (1971) (holding seminary of learning must pay tax because it was not explicitly exempted from taxation by statute listing exempted charities). Alternatively, the Petitioner invites the Tribunal to read a statute of limitations into the successor liability statute itself. The Tribunal, however, declines the Petitioner's invitation. The General Assembly was able to impose statutes of limitation in other areas of the law when it chose to do so, and that it did not do so in this instance allows the Tribunal to draw a negative inference from the statutory silence.

V. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Commissioner's Motion for Summary Judgment is **GRANTED** and the imposition of taxes, interest, and penalties is **AFFIRMED**. Accordingly, the Petitioner's Countermotion for Summary Judgment is **DENIED**.

SO ORDERED, this asth day of July, 2015.



LAWRENCE E. O'NEAL, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL

DOUGLASVILLE HOSPITALITY, INC.

PETITIONER

**SAMUEL H. GRIER, ESQ.
BOMAR LAW FIRM, LLC**

***ATTORNEYS FOR PETITIONER, DOUGLASVILLE
HOSPITALITY, INC.***

**SAMUEL S. OLENS, Attorney General, W. WRIGHT
BANKS, JR., Deputy Attorney General, WARREN R.
CALVERT, Senior Assistant Attorney General,
LOURDES G. MENDOZA, Senior Assistant Attorney
General**

***ATTORNEYS FOR RESPONDENT, LYNNETTE T.
RILEY, Commissioner, Georgia Department of Revenue***