New Jersey Tax Court Sets Aside Sales Tax Assessment Based on Estimated Sales

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A pizzeria operator successfully challenged a sales tax assessment made by the Division of Taxation ("Division") in which the auditor estimated the sales tax due. *La Troncal Food Corp. and Vicente Intriago v. Director, Division of Taxation*, N.J. Tax Court, Dkt No. 013472-2017 (October 2, 2024).

The Facts: Plaintiffs, La Troncal Food Corp. ("La Troncal") and Vincente Intriago (together, "Taxpayer"), operated a small pizzeria in the Ironbound section of Newark, New Jersey. Mr. Intriago and his father-in-law were the principals and operators of the business from 2005 through 2013. In January 2014, La Troncal and Mr. Intriago sold the pizzeria to Mr. Intriago's father-in-law and San Gerardo Food Corporation ("San Gerardo"). After the sale, Mr. Intriago and La Troncal ceased being involved with the restaurant in any capacity.

The Division began its audit of Taxpayer in September 2014, after the sale of the business to San Gerardo. As part of the audit, the auditor and his supervisor visited the restaurant, which at that time was owned and operated by San Gerardo, had different seating, employed more people, and had a different menu than the restaurant being audited. At the conclusion of the audit, the auditor determined that the Taxpayer had not provided adequate records and estimated the taxes owed based on the San Gerardo-owned restaurant that he visited.

The Decision: While there was some dispute about whether the Taxpayer had provided adequate records, the Tax Court recognized that the Division is permitted to estimate sales when a taxpayer's records are incomplete. The Court also noted that the Division's assessments are entitled to a presumption of correctness. However, the Court observed that a taxpayer may rebut the presumption of correctness through "cogent evidence," which must focus on the "reasonableness of the underlying data used by the Director and the reasonableness of the methodology used."

In this case, the Court found that the Taxpayer's credible testimony about the invoices provided to the auditor, the differing nature of the business before it was sold, and the expert testimony of Taxpayer's witness reconciling the Taxpayer's books and records with the amount of tax owed, overcame the presumption of correctness afforded to the Division's assessment.

In support of the assessment, the Division offered the testimony of the assistant field audit chief who supervised the audit but did not participate in or have personal knowledge of the audit. (The auditor

was no longer employed by the Division and did not testify). The Taxpayer objected to the supervisor's testimony on the grounds that the supervisor did not have the requisite personal knowledge to provide the testimony offered. The Court sustained the Taxpayer's objection, noting that, if admitted, a supervisor's opinion could permit the Division "to boot strap the proofs [justifying the auditor's actions in making an estimated assessment] with improper testimony that constitutes nothing more than speculation." The Court also rejected the Division's submission into evidence the auditor's original documentation under an exception to the hearsay rule because of concerns about the auditor's unexplained methodology and the unreliable nature of the data used in determining the assessment.

As a result, the Court found no basis on which to uphold the validity of the assessment and set it aside. Instead, it found that the taxpayer was liable for a lesser amount of sales tax based on its own expert's credible testimony.

This case is a good reminder that while auditors are permitted to estimate sales tax due when records are inadequate, those estimates must be reasonable and based on reliable data. When they are not, they are subject to challenge.

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