

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
RICKY ALAN DUMAS) Account Number SR KH 53-006336
Petitioner) Case ID 547380
Concord, Contra Costa County

Type of Liability: Responsible person liability
Liability period: 04/01/08 – 08/31/08

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Responsible person liability	\$37,485		
As determined and proposed to be redetermined		\$35,321.00	\$3,532.10
Less payments by another party		<u>- 1,368.13</u>	<u>00.00</u>
Balance, protested		<u>\$33,952.87</u>	<u>\$3,532.10</u>
Proposed tax redetermination		\$35,321.00	
Interest through 04/30/14		13,526.36	
Late payment penalties		<u>3,532.10</u>	
Total tax, interest, and penalties		\$52,379.46	
Payments		<u>- 1,368.13</u>	
Balance Due		<u>\$51,011.33</u>	
Monthly interest beginning 05/01/14		<u>\$ 169.76</u>	

This matter was scheduled for Board hearing in September 2013 and November 2013, but was postponed at petitioner’s request each time, first to allow additional time to prepare and then because of a family medical emergency.

UNRESOLVED ISSUES

Issue 1: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Auto Expo pursuant to Revenue and Taxation Code section 6829. We conclude petitioner is personally liable.

Auto Expo (SR KH 100-365250) operated a used car dealership from March 2004 through August 2008. At the time its business terminated, Auto Expo had unpaid liabilities related to two

1 returns filed with no remittance. The Sales and Use Tax Department concluded that petitioner was
2 personally responsible for Auto Expo's sales and use tax compliance pursuant to section 6829.¹

3 Petitioner disputes two of the four conditions for imposing personal liability pursuant to section
4 6829, that he is a responsible person and that he willfully failed to pay or to cause to be paid taxes due
5 from Auto Expo. Therefore, petitioner contends that he is not personally liable for Auto Expo's unpaid
6 tax liabilities, asserting that he had no control over the business, that he was not involved in the day-to-
7 day operations of the company, and that he was never involved in Auto Expo's sales and use tax
8 matters. Further, petitioner states that he never received wages from Auto Expo and that he either held
9 other jobs or was buying and selling homes for profit throughout the period that Auto Expo operated.
10 According to petitioner, his only involvement with the business from November 2007 through August
11 2008 was a monthly stop at the business, just to check in. Moreover, petitioner has stated that he was
12 not aware that Auto Expo had any outstanding tax liabilities.

13 It is not disputed that petitioner was Auto Expo's president at all times relevant herein, that he
14 had check-signing authority for Auto Expo, or that he held an ownership interest during the entire time
15 the business operated. In that regard, petitioner owned 51 percent of the company when the
16 corporation was formed, but he sold a portion of his interest in the company to Don Wert in February
17 2005, after which petitioner owned 35 percent of the corporate stock.

18 As the corporate president, petitioner had broad implied and actual authority to do all acts
19 customarily connected with Auto Expo's business. Further, petitioner exercised authority in Auto

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21 ¹ The Department also issued a responsible person determination for the same unpaid liabilities to Mr. Murray Jay Shane
22 (SR KH 53-005568). Mr. Shane filed an untimely petition, which was accepted as an administrative protest. An appeals
23 conference was held, and a D&R, issued December 13, 2012, recommended that Mr. Shane's appeal be denied. Mr. Shane
24 did not request a Board hearing, and his liability is now final. The Department also investigated Don Wert, Kathy Shane,
25 and Tamara Dumas, but it found insufficient evidence to hold any of those individuals personally liable. Specifically, the
26 Department found that Don Wert, who was a director and 32% shareholder, signed checks to other creditors during the
27 periods of liability, but there was no evidence of his involvement in sales and use tax matters before or during the liability
28 periods. Therefore the Department could not establish that he had knowledge of the sales tax liabilities. Kathy Shane was
listed as the treasurer on the seller's permit application, as CFO with the Secretary of State (SOS), and CFO and director on
corporate meeting minutes, while Tamara Dumas was listed as secretary on the seller's permit application, as secretary and
director with SOS, and as secretary and director on corporate meeting minutes. However, outside of signing the application
and corporate meeting minutes, the Department had no other evidence of Kathy Shane's or Tamara Dumas' involvement in
the day-to-day operations of the business or with sales and use tax matters. Lastly, Andy Abaurrea was the bookkeeper for
Auto Expo. He signed returns, with the last one being for 4th Quarter 2007. However, he did not sign the returns for the
periods at issue and the Department found no evidence to support his involvement during the liability periods outside of
being named as a responsible person by the petitioner.

1 Expo's sales and use tax matters, as evidenced by petitioner's signature on various documents related
2 to sales and use taxes, Auto Expo's corporate status, and other business matters. Although most of
3 those documents were dated in 2004, petitioner has not presented evidence that he resigned his position
4 as president or that he was relieved of his duties as president of Auto Expo after 2004. Accordingly,
5 we conclude that petitioner was a person responsible for Auto Expo's sales and use tax compliance
6 throughout the liability period.

7 With respect to willfulness, personal liability can be imposed on a responsible person under
8 section 6829 only if that person willfully failed to pay or to cause to be paid taxes due from the
9 corporation, which means that the failure was the result of an intentional, conscious, and voluntary
10 course of action (even if without a bad purpose or evil motive). A person is regarded as having
11 willfully failed to pay taxes, or to cause them to be paid, where he or she had knowledge that the taxes
12 were not being paid and had the authority to pay taxes or cause them to be paid, but failed to do so.

13 The first requirement for willfulness is knowledge. At the appeals conference, petitioner
14 indicated that he became aware in August 2008 that Auto Expo was delinquent on its taxes. At that
15 time, the only unpaid liabilities were those for the second quarter 2008 (2Q08). As for 3Q08, there is
16 no specific evidence that petitioner was aware of the unpaid liability for that quarter, but, based on his
17 knowledge of the liability for 2Q08 and the lack of evidence to suggest petitioner's involvement with
18 Auto Expo ended prior to its close-out, we find it more likely than not that petitioner was also aware
19 that taxes were due, and unpaid, for 3Q08.

20 Willfulness also requires that the responsible person must have been able to pay, or cause to be
21 paid, the taxes when due. We find for the same reasons noted above that petitioner had authority to
22 cause the taxes due to be paid. Regarding whether Auto Expo had sufficient funds to pay the taxes
23 due, we note that during the applicable periods, Auto Expo made payments to vendors and suppliers,
24 as shown in its bank statements, and paid wages, as evidenced by records of the Employment
25 Development Department. Thus, we find that funds were available to pay the sales tax liability, but
26 Auto Expo's management chose to pay other creditors instead. In summary, we conclude that all
27 conditions have been satisfied for imposing personal liability on petitioner under section 6829 for the
28 outstanding tax liabilities of Auto Expo.

