STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Administrative Protest And Claims for Refund of Successor Liability Under the Sales and Use Tax Law of: LABEAU, LLC, dba Color Me Mine-Westchester Taxpayer/Claimant	Account Number SR AS 101-244004 Case ID's 556888, 558475, 608117 Los Angeles, Los Angeles County

Type of Business: Ceramic art studio

Liability period/Claim periods: 10/01/04 – 08/31/08

Item	Disputed Amount
Successor liability	$9,752
Claimed refunds	$3,348 (Case ID 558475)
	$4,010 (Case ID 608117)

	Tax	Penalty
As determined	$12,705.07	$1,801.55
Post-D&R adjustment	00.00	-1,801.55
Adjusted liability	$12,705.07	$ 00.00
Payments by others	- 2,953.06	
Balance, protested	$ 9,752.01	
Tax, as determined	$12,705.07	
Interest	2,473.94	
Total tax and interest	$15,179.01	
Payments	- 15,179.01	
Balance Due	$ 00.00	

This matter was scheduled for Board hearing in October 2013, but petitioner did not respond to the Notice of Hearing. Thus, the matter was scheduled for decision on the Consent calendar, but it was pulled from the Consent calendar at the request of Member Runner and has been rescheduled on the Adjudicatory calendar.

UNRESOLVED ISSUE

Issue: Whether taxpayer is liable as a successor for the unpaid liabilities of Radianceblossom Enterprises, Inc. We conclude taxpayer is liable as a successor.

Ronkel Enterprise, Inc. (Ronkel) (SR AS 100-094133) did business as Color Me Mine, from November 2002 through May 2007, when it sold the business to Radianceblossom Enterprises, Inc. (Radiance) (SR AS 100-929085), which operated the business until August 31, 2008, when it sold the business to taxpayer. At the time of that sale, Radiance had unpaid liabilities related to a Notice of Successor Liability (NOSL) for liabilities incurred, but not paid, by Ronkel, and two Notices of Determination issued to Radiance for delinquent returns. The Sales and Use Tax Department (Department) concluded that taxpayer was liable as a successor for Radiance's unpaid tax obligations.

Taxpayer contends it should not be held liable for the subject tax liabilities because taxpayer did not incur the tax liabilities. Further, taxpayer asserts that the agreement between Radiance and taxpayer, executed on August 28, 2008, protected taxpayer from this liability because Radiance agreed that taxpayer would not be responsible for any taxes incurred before September 1, 2008. In addition, taxpayer contends that the NOSL issued to it was not timely with respect to the liability of Ronkel because it was issued more than three years after the period for which Ronkel was audited (October 1, 2004, through May 31, 2007).

It is undisputed that taxpayer did not personally incur the tax liabilities owed by Radiance at the time it sold its business to taxpayer. However, it is also undisputed that taxpayer failed to withhold any amount from the purchase price of the business to cover the unpaid tax liabilities of Radiance and failed to request or receive a certificate of payment from the Board. Thus, taxpayer is liable as a successor for the unpaid liabilities of Radiance. (Rev. & Tax. Code, §§ 6811, 6812; Cal. Code Reg., tit. 18, §1702, subds. (a), (c).) While taxpayer and Radiance may have agreed that taxpayer would not be liable for Radiance's tax liability, the contractual shifting of tax burdens is a matter exclusively between the contracting parties and has no effect on a taxpayer's liability vis-à-vis the state. Accordingly, we find taxpayer is liable as a successor for all of Radiance's unpaid liabilities, including the NOSL for liabilities that remained unpaid by Ronkel when Radiance purchased the business. With respect to taxpayer's argument that the NOSL was not issued timely, the Department had three years from September 2, 2008 (i.e., the date on which Radiance notified the Department that it had sold the business to taxpayer) to issue an NOSL to taxpayer, and it issued that notice July 6, 2010, well within the three-year period. (See Cal. Code Regs., tit. 18, § 1702, subd. (d)(1).) Since taxpayer is liable for

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Radiance's unpaid liabilities, which include the NOSL issued to Radiance, the period for which Ronkel was audited is not relevant to the determination of whether the NOSL issued to taxpayer is timely.

Taxpayer has filed timely claims for refund of $3,347.97 (Case ID 558475) and $4,010.00 (Case ID 608117). The entire amount claimed was applied to tax and interest. Since we recommend no adjustment to the tax, and the amount of tax and interest paid does not exceed the amount due, we recommend that the claims for refund be denied.

RESOLVED ISSUE

The determination included failure to file and finality penalties imposed against Ronkel and Radiance, which totaled $1,801.55, that were included in the Notice of Successor Liability issued to taxpayer. Taxpayer filed a request for relief of the penalties, stating that it had no relationship with either of the predecessors. The Department has presented no argument or evidence to refute taxpayer's statement. Accordingly, we recommend that taxpayer be relieved of these penalties. Taxpayer made payments of $760.00 on April 15, 2012, and $709.93 on May 15, 2012, $1,381.95 of which was applied to penalties ($419.60 of the penalties had been paid by another party). The Department has issued a refund of $1,381.95 to taxpayer, even though taxpayer had not filed claims for refund of the payments made April 15, 2012, and May 15, 2012.

OTHER MATTERS

None.

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