

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Administrative Protest and)
 4 Claim for Refund under the Sales and Use Tax)
 Law of:) Account Number: SR FH 53-003964
 5 RONALD J. BLOMQUIST) Case ID's 467934, 565903
 6 Taxpayer/Claimant)
) Thousand Oaks, Ventura County

7
 8 Type of Liability: Responsible person liability

9 Liability period: 01/01/05 – 11/28/05

10 Item Disputed Amount

11 Responsible person liability \$371,752

12 Tax as determined and protested \$326,833.34

13 Interest through 11/30/15 248,395.55

14 Late payment penalties 38,571.50

Late prepayment penalties 6,346.90

14 Total tax, interest, and penalty \$620,147.29

15 Payments - 52,149.24

Balance Due \$567,998.05

16 Monthly interest beginning 12/01/15 \$ 1,373.42

17 This matter was scheduled for Board hearing in October 2011, and again in February 2012, but
 18 was postponed each time at taxpayer's request, first because of a scheduling conflict and then to allow
 19 additional time to prepare for the hearing. The matter was then rescheduled for hearing in July 2012
 20 but was postponed for settlement consideration. It was rescheduled for hearing in October 2013 but
 21 was postponed at taxpayer's request because of a scheduling conflict. It was then rescheduled for
 22 hearing in February 2014, but was deferred at the request of the Appeals Division in order to issue a
 23 Supplemental D&R to address taxpayer's untimely Request for Reconsideration. It was rescheduled
 24 for Board hearing in August 2014, but was postponed again for settlement consideration.

25 UNRESOLVED ISSUES

26 **Issue 1:** Whether taxpayer is personally liable as a responsible person for the unpaid liabilities
 27 of Blomquist Enterprises, Inc. (SR FHB 97-510789) pursuant to Revenue and Taxation Code section
 28 6829. We conclude taxpayer is personally liable.

1 Blomquist Enterprises, Inc. (BEI) operated a used car dealership from March 10, 1999, through
2 November 28, 2005. At the time its business terminated, BEI had unpaid liabilities related to four
3 sales and use tax returns and two prepayment forms filed with no remittance. The Sales and Use Tax
4 Department (Department) determined that BEI's business was terminated on or about November 28,
5 2005, and that BEI had added or included sales tax reimbursement in its retail sales. It also determined
6 that taxpayer was a person responsible for managing BEI's financial affairs, including compliance with
7 tax matters, and that taxpayer willfully failed to pay or to cause to be paid BEI's tax liabilities.¹

8 Taxpayer has not expressly conceded any of these four requisite elements for holding an individual
9 liable for the tax-related liabilities incurred by a corporation, although his principal contention is that
10 he did not willfully fail to pay those liabilities.

11 The Board's computerized records indicate that BEI's seller's permit was closed out as of
12 November 28, 2005. In a telephone conversation on August 2, 2006, Ms. Christina Robinson, BEI's
13 office manager, confirmed that the business was discontinued on November 28, 2005. Therefore, we
14 find the first requirement for responsible person liability has been met. Regarding the requirement that
15 the business must have collected tax reimbursement, we note that copies of BEI's retail installment
16 sales contracts show separately itemized amounts of sales tax reimbursement. Thus, we find that the
17 second requirement has been met.

18 As president of BEI, taxpayer signed three of the four sales and use tax returns at issue, and he
19 spoke to the Department several times regarding the unpaid tax liabilities. In addition, taxpayer signed
20 an installment agreement to pay the amounts of tax due for the first and second quarters of 2005, and
21 he signed various documents recorded with the Secretary of State. We find that this evidence
22 establishes that taxpayer was directly involved in and responsible for sales and use tax matters.

23 The final condition for imposing liability on taxpayer is that he must have willfully failed to
24 pay or to cause to be paid the amounts due. This means that the failure must have been the result of an

25
26 ¹ Taxpayer's wife, Ms. Linda Lee Blomquist, was listed as the Vice President of the corporation on the seller's permit
27 application; however, she was not listed as an officer with Secretary of State (SOS). Taxpayer was listed as the sole officer,
28 director, and agent with SOS and in BEI's bankruptcy documents. According to the Department, there were some contacts
between the Department and Mrs. Blomquist, but she appears to have deferred to her husband to make all decisions. The
Department found that there was no evidence other than the seller's permit application indicating that Mrs. Blomquist was a
responsible person for BEI's sales tax compliance, and therefore the Department did not issue a determination against her.

1 intentional, conscious, and voluntary course of action (even if without a bad purpose or evil motive).
2 A person is regarded as having willfully failed to pay taxes, or to cause them to be paid, where he or
3 she had knowledge that the taxes were not being paid and had the authority to pay taxes or to cause
4 them to be paid, but failed to do so.

5 Since taxpayer signed three of the four returns and discussed the liabilities with the
6 Department, he clearly knew that the amounts due had not been paid, and as president of BEI, taxpayer
7 had the authority to cause the taxes due to be paid. Finally, we note that during the applicable periods,
8 BEI was making substantial sales, as evidenced by its reported gross receipts. Also, taxpayer has
9 admitted that during the liability period BEI paid wages, vendors, and other creditors. We therefore
10 find that funds were available to pay the sales tax liability, but taxpayer chose to pay other creditors
11 instead. It is immaterial how taxpayer characterizes those payments, since his failure to pay the tax-
12 related liabilities at issue was willful if he paid *any* other creditor, rather than the tax liability, with
13 available funds. In summary, we conclude that all conditions have been satisfied for imposing
14 personal liability on taxpayer under section 6829 for the outstanding tax liabilities of BEI.

15 On February 20, 2011, taxpayer filed a claim for refund for all payments made to that date,
16 which he described as “over \$14,000.” Although the total amount paid as of that date was \$17,369.00,
17 the claim for refund was timely only for the payments made during the period August 20, 2010,
18 through February 20, 2011, which totaled \$3,000. (Rev. & Tax. Code, § 6902, subd. (a).) Since we
19 find that taxpayer is personally liable for the amounts originally assessed against BEI and the amounts
20 paid do not exceed the amount due, we conclude that there has been no overpayment and that the claim
21 for refund should be denied.

22 **Issue 2:** Whether the amounts due from BEI or from taxpayer were discharged in bankruptcy.
23 We find that neither the corporation’s nor taxpayer’s liabilities were discharged in bankruptcy.

24 In an untimely Request for Reconsideration (RFR) received by Board Proceedings October 22,
25 2013, taxpayer contends that the Board is prevented from assessing and collecting the amounts at issue
26 because it was properly notified of both BEI’s and taxpayer’s bankruptcies, and it failed to file a Proof
27 of Claim. Taxpayer argues, therefore, that the amounts at issue were discharged in bankruptcy.

1 We first note that taxes are not generally dischargeable in bankruptcy. (11 U.S.C. §§ 523
2 (a)(10)(A), 507(a)(8).) BEI filed a Chapter 7 voluntary bankruptcy petition on April 11, 2006, and the
3 case was terminated on September 28, 2012, without discharge. Taxpayer has not provided any
4 evidence, nor are we aware of any evidence that BEI was granted a discharge of the tax liabilities at
5 issue. In addition, since BEI filed for bankruptcy within the three year period after the returns at issue
6 were due, the liabilities were not discharged in bankruptcy. (11 U.S.C. §§ 523(a)(1)(A), 507(a)(8).)
7 Nevertheless, even if the liabilities had been discharged in the bankruptcy proceeding, such a discharge
8 would not have discharged the obligation as to taxpayer because taxpayer's liability at issue is a
9 personal liability, separately imposed through operation of section 6829.

10 Taxpayer filed a Chapter 7 voluntary bankruptcy petition on December 12, 2006, and the case
11 was terminated September 13, 2007. Taxpayer was granted a discharge on September 10, 2007, and
12 the determination was issued to taxpayer on June 25, 2008, long after taxpayer filed for bankruptcy.
13 Since the liability against taxpayer was not assessed before the bankruptcy petition was filed and
14 remained assessable thereafter, the tax liabilities were not discharged. (11 U.S.C. § 507(a)(8)(A)(iii).)

15 Further, since both BEI's and taxpayer's bankruptcies were no asset bankruptcies, a creditor
16 such as the Board would not have been required to file a Proof of Claim. Accordingly, we find that
17 neither BEI's nor taxpayer's liabilities were discharged in bankruptcy.

18 **Issue 3:** Whether taxpayer has established reasonable cause for relieving penalties for late
19 payment of returns and late prepayments originally assessed against BEI. We conclude he has not.

20 Taxpayer's request for relief reiterates his argument that he did not willfully fail to pay BEI's
21 tax liabilities when they became due. Taxpayer did not express any reason why *BEI* failed to timely
22 pay the amounts at issue. Accordingly, we conclude that relief is not warranted. Also, in his RFR,
23 taxpayer asserts that relief of the penalties should be granted because the Department was barred from
24 assessment and collection of the penalties due to BEI's and taxpayer's bankruptcies. For the reasons
25 explained previously, we find that the Department was not barred from such assessment and collection.

26 Other Matters

27 As part of the penalties the Department included in the NOD issued to petitioner is a 6-percent
28 late-prepayment penalty of \$1,972.14 for October 2005 imposed against BEI for its failure to timely

1 make its prepayment for that month.² In addition, the Department imposed an additional 4-percent
2 penalty of \$1,314.76 for October 2005 (based on 4 percent of the \$32,869.00 tax reported on the
3 prepayment form for October 2005), which the Department characterizes as a “late prepay after
4 quarter” penalty.

5 Revenue and Taxation Code section 6476 states that any person required to make a prepayment
6 pursuant to section 6471 who fails to make a timely prepayment *but makes such prepayment* before the
7 last day of the monthly period following the quarterly period in which the prepayment became due,
8 shall also pay a penalty of 6 percent of the amount of prepayment. (Emphasis added.)

9 Here, the Department imposed a 6-percent late prepayment penalty for BEI’s October 2005 late
10 prepayment; however, for 4Q05 BEI did not remit the amounts due for this quarter, in full, by the date
11 due, and therefore BEI could not incur this 6-percent penalty based on its October 2005 prepayment
12 return. In addition, while the Department imposed a 4-percent “late payment after quarter” penalty for
13 October 2005, no such penalty exists in the Sales and Use Tax Law. However, section 6591 states that
14 any person who does not timely pay the tax due with its monthly returns shall pay a penalty of 10
15 percent of the amount of the tax. Here, BEI did not timely pay tax that was due for 4Q05 and,
16 therefore, BEI was subject to the 10-percent late payment penalty pursuant to section 6591 for failing
17 to timely make its tax payment for this quarter. Therefore, despite the Department’s error in imposing
18 the above-referenced 6-percent and 4-percent penalties, since the aggregate amount of penalties
19 imposed by the Department for 4Q05 did not exceed 10 percent of the total amount of tax due by BEI
20 for this quarter for its failure to timely pay tax pursuant to section 6591, the ultimate penalty amount is
21 correct and no adjustment is warranted.

22
23 Summary prepared by Lisa Burke, Business Taxes Specialist III
24
25
26

27 ² A prepayment for each of the first two months of the first, third, and fourth quarters is due on or before the 24th day next
28 following the end of the first and second months in the quarter. For the second quarter the prepayment for the second month
of the quarter and the first 15 days of the third month of the quarter is due on or before the 24th day of the third month in
the quarter. (Rev. & Tax. Code, § 6472.)