

**CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matters of the Administrative Protest)
of Successor Liability and Claim for Refund¹)
Under the Sales and Use Tax Law of:)
ZAID RAHMANI, TARIQ MOHAMMED RASULI,) Account Number: SR JH 100-457844
& MANSOOR RAHMANI,) Case ID 296294
dba Cigarettes "R" Cheaper)
Taxpayer/Claimant) San Leandro , Alameda County

Type of Business: Mini mart
Liability period: 10/01/96 – 03/31/04

<u>Item</u>	<u>Disputed Amount</u>	
Successor liability	\$9,556 ²	
		<u>Successor Liability</u>
As determined:		\$41,995.12
Adjustment - Sales and Use Tax Department		-32,203.81
Payments by predecessor		- 235.09
Balance, protested		<u>\$ 9,556.22</u>
Successor liability, adjusted		\$ 9,556.22
Payments		<u>9,556.22</u>
Balance Due		<u>\$ 00.00</u>

UNRESOLVED ISSUES

Issue 1: Whether taxpayer is liable as a successor for the unpaid liabilities of Cigarettes Cheaper (SR JHF 99-793094). We conclude that taxpayer is liable.

Taxpayer purchased a Cigarettes Cheaper sub-location without withholding any amount from the purchase price for payment of sales and use tax owed by Cigarettes Cheaper and without obtaining a tax clearance certificate from the Board. The Sales and Use Tax Department (Department) found

¹ A claim for refund of \$500.00 was filed March 8, 2006, but was not forward to the Appeals Division until October 29, 2009. Although a separate case ID has not been established for this matter, we will address the claim in the summary and recommend it be acted on as part of this appeal.

² The successor liability includes late-payment penalties, originally assessed against the predecessor, and not paid by the predecessor, of \$1,907.07.

that taxpayer is liable as a successor for Cigarettes Cheaper's unpaid liabilities pursuant to a Notice of Determination for the period October 1, 1996, through September 30, 1999, and for liabilities associated with partial-remittance returns filed for the fourth quarter 2003 and the first quarter 2004. The Department therefore issued a Notice of Successor Liability to taxpayer on October 20, 2004. The Department subsequently reduced the amount of the successor liability to reflect adjustments made to the predecessor's liability and payments made by the predecessor.

As relevant here, the liability assessed against the predecessor was based on taxable gross receipts in the form of third-party cigarette rebates paid to the predecessor in connection with its taxable retail sales of cigarettes. The Department recalculated the predecessor's liability to remove the tax assessed on cigarette rebates paid to the predecessor for sales it made prior to January 1, 1999, as ordered by the Board on March 18, 2008. However, in making those adjustments, the Department identified errors in the Notice of Successor Liability that, even after making the adjustment, results in an increase to taxpayer's liability. The Department has not asserted that increase.

Taxpayer filed an untimely appeal of the Notice of Successor Liability, which has been accepted as an administrative protest.³ Taxpayer contends that the Department's determination against Cigarettes Cheaper is not yet final, and the Board should not pursue taxpayer until that matter is resolved. However, the statute imposing the duty on a purchaser of a business to withhold sufficient of the purchase price to pay sales and use tax debts is not conditioned on the liability having been reduced to a final liability. Rather, the liability accrues under Revenue and Taxation Code section 6812 upon a successor's failure to comply with the requirements of Revenue and Taxation Code section 6811 (withhold sufficient of the purchase price to pay any tax debts, or obtain a tax clearance). In any event, this contention is moot since the primary liability of Cigarettes Cheaper is now final.

Taxpayer contends further that, when it purchased the sub-location, it was unaware of the outstanding tax liability, consistent with the seller's representations, and its understanding was that the

³ The liability is paid in full, and taxpayer filed a claim for refund of \$500 paid in December 2005. Since more than three years has elapsed from the due date of the liability, the relevant limitation period within which to file a claim for refund in connection with any of the remaining payments is six months from the date the liability became final or six months from the date of payment. (Rev. & Tax. Code, § 6902, subd. (a).) The liability became final on November 19, 2004, and the last payment was made December 29, 2006. Thus, the applicable limitation periods for filing a claim for refund have expired for any payment other than the \$500 payment made in December 2005 for which the timely claim for refund was filed.

seller had agreed to pay any taxes that had accrued prior to the date of the sale. Taxpayer also contends it is unfair to make it pay Cigarettes Cheaper's tax liabilities. The fact that taxpayer may have been unaware of Cigarettes Cheaper's tax liability is not a basis for relief from the liability. Section 6811 imposes an affirmative duty on a purchaser of a business or stock of goods to either withhold an amount from the purchase price sufficient to cover the tax liability of the seller or to request a certificate from the Board stating that the seller of the business has no outstanding liabilities. Taxpayer did neither.

Nor does taxpayer's argument that it is unfair to make it pay Cigarettes Cheaper's tax-related liabilities provide any basis for relief. As noted above, the law establishes procedures a purchaser of a business is required to follow in order to avoid being held liable as a successor. Taxpayer did not comply with those requirements, and it is thus liable as a successor for the outstanding liabilities of Cigarettes Cheaper. Similarly, any purported agreement by Cigarettes Cheaper to pay any taxes and related interest and penalty that had accrued before the date of the sale of the business is irrelevant. Indeed, there is no dispute whatsoever that Cigarettes Cheaper incurred the liability in dispute, and is primarily liable for it. It could not, by agreement, avoid such liability vis-à-vis the Board, nor would any agreement to retain that liability vis-à-vis its purchaser be relevant to the liability of Cigarettes Cheaper to the Board. The existence of such an agreement would be similarly irrelevant to taxpayer's dual liability for the subject debt, which taxpayer incurred under section 6812 by failing to comply with the requirements of section 6811.

Issue 2: Whether taxpayer should be relieved of the late-payment penalties imposed against the predecessor that were passed through to taxpayer as part of the successor liability. We recommend no relief.

As noted previously, the Notice of Successor Liability includes late-payment penalties of \$1,907.07 which were originally assessed against, and have not been paid by, the predecessor. A successor may be relieved of any penalty included in the Notice of Successor Liability which was originally imposed upon the predecessor when there is no relationship between the successor and predecessor. Although the Department advised taxpayer of the possibility of relief of the penalties, taxpayer has not filed the requisite statement, signed under penalty of perjury. Thus, although we are

unaware of any facts indicating that taxpayer had a relationship with Cigarettes Cheaper that would preclude relief, in the absence of that statement, we have no basis to recommend relief of the late-payment penalties.

AMNESTY

The amnesty interest penalty is not applicable in this case because taxpayer filed an application for amnesty and entered into a qualifying installment payment plan. In addition, the amnesty interest penalty applies only to interest that accrued on the unpaid tax balance as of March 31, 2005, and here all the tax was paid prior to March 31, 2005.

OTHER DEVELOPMENTS

Although taxpayer's claim for refund of \$500.00 filed March 8, 2006, has not been issued a separate case ID number, we present it to the Board for decision as part of this appeal. Since we find that there determination was valid and payment of the determined amount has not resulted in any overpayment, we recommend that the claim for refund be denied.

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