

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Administrative Protest) Under the Sales and Use Tax Law of:)) EDWARD A. FOSTER)) Taxpayer)	Account Number: SR CH 53-003135 Case ID 424872) Moraga, Contra Costa County
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Type of Liability: Responsible person liability

Liability period: 07/01/04 – 06/30/05

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Responsible person liability	\$8,010 ¹		
As determined and proposed to be redetermined:	\$16,314.48	\$16,314.48	\$1,936.20
Less concurred		<u>16,314.48</u>	<u>00.00</u>
Balance, protested		<u>\$ 00.00</u>	<u>\$1,936.20</u>
Proposed tax redetermination	\$16,314.48		
Interest through 3/31/10	7,935.17		
Penalties originally assessed against corporation	<u>1,936.20</u>		
Total tax, interest, and penalty	\$26,185.85		
Payments		<u>150.00</u>	
Balance Due		<u>\$26,035.85</u>	
Monthly interest beginning 4/1/10		<u>\$ 94.29</u>	

UNRESOLVED ISSUES

Issue 1: Whether relief is warranted from the late-payment and finality penalties originally assessed against the corporation. We find that relief is not warranted.

St. Gallen Corporation (seller's permit SR CH 99-825315) was a retailer of refurbished motor engines. When it ceased operating on June 30, 2005, it had unpaid tax-related liabilities for non-remittance or partial-remittance sales and use tax returns for the period July 1, 2004, through June 30, 2005, and two unpaid Notices of Determination. The total amount due included tax of \$16,314.48, and

¹ Consisting of penalties of \$1,936 and interest. The request for relief of interest seems to cover all interest while stating a specific amount of interest (\$6,074.25) and period (July 1, 2004, through October 23, 2008) for which the request for relief is made. For purposes of this table, we have used the specifically identified amount of interest for which relief is sought.

penalty of \$1,936.20, including late-payment penalties of \$1,867.80 (related to amounts reported on returns) and finality penalties \$68.40 (related to amounts for which Notices of Determination were issued). The Sales and Use Tax Department (Department) concluded that taxpayer is personally liable for the unpaid liabilities of the corporation because he was a responsible person within the meaning of Revenue and Taxation Code section 6829. Taxpayer did not file a timely petition for redetermination but did send correspondence to the Department which it accepted as an administrative protest. In the administrative protest and subsequent correspondence, taxpayer concedes that he is a responsible person liable under section 6829 for the tax owed by the corporation.

There is no statutory or regulatory authority for relieving penalties in section 6829 determinations, but section 6592 provides that the penalties assessed against the corporation may be relieved if the Board finds that the corporation's failure to timely pay a return or determination was due to reasonable cause. Taxpayer has filed a request for relief of the penalties on the basis that the penalties are unjust, and there was unreasonable delay in issuing the determination against taxpayer. However, taxpayer's statement relates only to the determination issued to him, and not to *the corporation's* failure to timely pay the returns or determinations. Accordingly, we find there is no basis upon which to recommend relief of the late-payment penalties or the finality penalties assessed against the corporation.

Issue 2: Whether relief of interest is warranted. We find no basis for relief.

Taxpayer has filed a request for relief of interest on the basis that the process has been cumbersome, that he has made several attempts to settle the matter without success, and that he was instructed to wait until a notice of Determination was issued against him personally before he could offer a settlement. Taxpayer also apparently believed that the corporate debt had been discharged in bankruptcy.

The evidence indicates no unreasonable error or delay on behalf of Board staff. The corporation ceased operations on or before June 30, 2005, and the Department concluded on or about June 1, 2007, that taxpayer was a person responsible for the tax-related liabilities incurred by the corporation. The Department issued the Notice of Determination to taxpayer on July 23, 2007. Taxpayer submitted a settlement proposal on December 27, 2007, and an appeals conference was held

in due course on November 7, 2008. We find no delay in this matter, let alone an unreasonable one. Further, taxpayer has been aware of the liability at issue from the moment the corporation incurred it and neither error nor delay by the Department caused the non-payment of the liability. Thus, we find no basis upon which to recommend relief of any interest.

OTHER DEVELOPMENTS

None.

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