

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Administrative Protest)
Under the Sales and Use Tax Law of:)
KARLEN ANTONYAN, dba Kah Fuel) Account Number: SR AC 100-950321
Taxpayer) Case ID 472389
North Hollywood, Los Angeles County

Type of Business: Gasoline station with mini-mart

Audit period: 11/25/04 – 07/31/07

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Successor liability	\$159,275		
As determined		\$165,062.93	\$16,506.32
Pre-D&R adjustment		- 4,219.71	- 421.97
Post-D&R adjustment		<u>00.00</u>	<u>-16,084.35</u>
Adjusted determination		\$160,843.22	<u>\$ 00.00</u>
Less payment by predecessor		<u>- 1,568.07</u>	
Balance, protested		<u>\$159,275.15</u>	
Proposed tax redetermination		\$160,843.22	
Interest through 07/31/12		<u>85,429.92</u>	
Total tax and interest		\$246,273.14	
Payments		<u>- 1,748.07</u>	
Balance Due		<u>\$244,525.07</u>	
Monthly interest beginning 08/01/12		<u>\$ 795.48</u>	

This matter was scheduled for Board hearing in October 2010, but taxpayer did not respond to the Notice of Hearing. Accordingly, the matter was scheduled for decision on the nonappearance calendar, but taxpayer subsequently requested that it be rescheduled for hearing. The matter was then deferred in order to schedule this matter with a related case, Ali Zarringhalam (case ID 459959). However, Mr. Zarringhalam did not request a hearing, and that case has been closed. This matter was then scheduled for hearing on January 31, 2012, but taxpayer again did not respond to the Notice of Hearing. Accordingly, the matter was scheduled for decision on the nonappearance calendar, but, again, taxpayer subsequently requested that it be rescheduled for hearing.

UNRESOLVED ISSUE

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2 **Issue:** Whether taxpayer is liable as a successor for the unpaid sales and use tax liability of Ali
3 Zarringhalam. We find that he is.

4 Ali Zarringhalam (SR AC 100-492509) operated a gasoline station with a mini-mart from
5 November 25, 2004, through July 31, 2007. He sold the business to taxpayer for \$540,000 plus an
6 additional sum for inventory. In July 2008, the Sales and Use Tax Department (Department) issued a
7 Notice of Determination to Mr. Zarringhalam for an understatement of tax of \$165,062.93, a
8 negligence penalty of \$16,506.32, plus applicable interest, for the period he operated the business. The
9 amounts due were reduced in a reaudit to \$160,843.22 tax and \$16,084.35 penalty. Since taxpayer had
10 purchased the business and had failed to obtain a receipt or secure a certificate of payment from the
11 Board, the Department concluded taxpayer was liable as a successor for the amounts incurred by
12 Mr. Zarringhalam, and it issued the Notice of Successor Liability at issue.

13 Taxpayer contends that he should not be held liable as a successor because he used an escrow
14 company for the purchase of the business to avoid this type of liability and he had no reason to believe
15 that there was any unpaid tax liability when the escrow closed. The parties amended the escrow
16 instructions to provide that, notwithstanding anything in the original escrow instructions, no amounts
17 were to be withheld for payment of tax liability to the Board, that Mr. Zarringhalam was responsible
18 for any such unpaid tax liabilities, and that he would indemnify taxpayer if taxpayer was required to
19 pay any such tax liability. Taxpayer also provided a copy of a letter he obtained from the escrow
20 company requesting a “certificate of release” addressed simply to the “State Board of Equalization,
21 CA” without specifying any particular address.

22 We find that the copy of a letter, which lacks a specific address for the Board, does not
23 establish that the request was actually submitted to the Board, and the Board has no record of having
24 ever received it prior to this appeal. We note further that the letter is dated after the sale had occurred.
25 Since taxpayer did purchase the business, did not withhold any amount from the purchase price, and
26 did not request or receive a certificate of payment from the Board, we find taxpayer is liable as a
27 successor for the unpaid liabilities of Mr. Zarringhalam, which exceed the purchase price. With
28 respect to the amended escrow instructions (which indicate that taxpayer was aware of the potential

1 problem), Mr. Zarringhalam’s agreement to be responsible for taxes incurred prior to the sale between
2 him and taxpayer has no effect on taxpayer’s tax liability vis-à-vis the state. We note further that,
3 without regard to that agreement, Mr. Zarringhalam certainly does remain responsible for the taxes he
4 incurred vis-à-vis the state (taxpayer’s liability is a dual liability, and the Board will collect the liability
5 only once).

6 **RESOLVED ISSUE**

7 The determination issued to Ali Zarringhalam included a negligence penalty of \$16,506.32,
8 which was reduced to \$16,084.35 in a reaudit. Taxpayer requested relief of the penalty on the basis
9 that there was no relationship between him and the seller. The Department has recommended that the
10 negligence penalty be deleted from the successor liability, and we concur.

11 **OTHER MATTERS**

12 None.

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