

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:)
WILLIAM M. BUCHANAN) Account Number: SC OHB 53-002801
Taxpayer) Case ID 458690
Alexandria, Virginia

Type of Liability: Responsible person liability
Liability period: 01/01/01 – 12/31/01

<u>Item</u>	<u>Disputed Amount</u>
Responsible person liability	\$97,104
Tax determined and protested	\$ 76,766.00
Interest through 11/30/11	64,917.47
Late payment penalties	9,199.09
Amnesty interest penalties	<u>11,139.03</u>
Total tax, interest, and penalty	\$162,021.59
Payments	- 6,531.13
Balance Due	<u>\$155,490.46</u>
Monthly interest beginning 12/1/11	<u>\$ 351.17</u>

This matter was scheduled for Board hearing on April 26, 2011, but was postponed at taxpayer's request due to a scheduling conflict. It was rescheduled for Board hearing on July 26, 2011, but was postponed at taxpayer's request to allow additional time to prepare for the hearing.

UNRESOLVED ISSUES

Issue 1: Whether taxpayer is personally liable pursuant to Revenue and Taxation Code section 6829 for the unpaid liabilities of Wholesale Lighting, Inc. We conclude taxpayer is personally liable.

Wholesale Lighting, Inc. (WLI), dba Commercial Wholesale Lighting, a Virginia corporation that had offices in San Francisco and Los Angeles, was a retailer of lighting fixtures and replacement bulbs and held seller's permit SC OHB 97-898117 from January 1, 2001, through January 31, 2002. WLI filed sales and use tax returns and prepayment forms without remittance, and when the business closed, WLI had outstanding liabilities for such self-reported, but unpaid, tax and penalties.

1 The Sales and Use Tax Department (Department) concluded that taxpayer was personally liable
2 for WLI's outstanding liabilities pursuant to section 6829. The two conditions for imposing section
3 6829 liability that taxpayer disputes are whether he was responsible for sales tax compliance by WLI
4 and whether he willfully failed to pay or to cause to be paid the taxes owed by WLI.

5 The Department concluded that taxpayer was responsible for managing the financial affairs of
6 WLI, including filing returns, noting that he was listed as CEO and agent on the records of the
7 Secretary of State, was identified as vice-president with the Employment Development Department
8 (EDD), and was listed as president and Chief Financial Officer on an undated new account application
9 with supplier MagneTek. Board records also show that taxpayer discussed sales and use tax matters
10 with the Department on several occasions. Further, taxpayer does not dispute that he was president
11 and CEO of the corporation for the period at issue, and taxpayer listed the Board as a creditor in his
12 personal bankruptcy. The Department found that taxpayer had been willful in his failure to pay the
13 outstanding tax liabilities, or to cause them to be paid, because it found that the corporation paid wages
14 during the period when it did not remit sales tax due.

15 Taxpayer states that he was not involved in the day-to-day operations of WLI, that he was
16 responsible for generating sales, and that his role as CEO was to determine the best way to unwind the
17 company. Taxpayer asserts that the controller and her staff were in charge of sales tax matters, and he
18 was not aware that sales tax was not being remitted to the Board and had no control over the payment
19 of taxes due from WLI.

20 We find no merit in taxpayer's contention that he did not have control or supervision of WLI's
21 filing of returns and payment of tax, and that other employees had sole responsibility for those duties.
22 As president of the corporation during the period at issue, even if he had delegated those duties to other
23 employees, taxpayer still had the legal responsibility to ensure such compliance, and we find that he
24 was a responsible person for WLI within the meaning of section 6829. With respect to willfulness, this
25 condition requires that taxpayer's failure to pay or to cause to be paid the taxes due was the result of an
26 intentional, conscious, and voluntary course of action (even if not done with a bad purpose or evil
27 motive). Taxpayer is regarded as having willfully failed to pay taxes or to cause them to be paid if he
28 had knowledge that the taxes were not being paid and had the authority to pay taxes or to cause them to

1 be paid, but failed to do so. Taxpayer claims that he was unaware of the tax liability for the period
2 January 1, 2001, through December 31, 2001. However, a conversation between taxpayer and the
3 Department on November 30, 2001, shows that taxpayer had knowledge of the delinquency by that
4 date, and supports a finding that he had been aware of tax payment problems. Furthermore, as
5 president, taxpayer clearly had the power and authority to pay or to cause to be paid the taxes due.

6 WLI received payments for the sale of goods, including sale tax reimbursement collected as
7 part of those payments, and used its available funds to pay other corporate liabilities. We conclude
8 that taxpayer's failure to pay the subject taxes, or cause them to be paid, out of the available funds
9 constitutes a willful failure to pay, or cause to be paid, the taxes due. Accordingly, we find that
10 taxpayer is personally liable under section 6829 for the liabilities incurred by WLI.

11 **Issue 2:** Whether the penalties imposed on WLI should be relieved. We conclude that relief is
12 not warranted.

13 We advised taxpayer at the conference that a request for relief of penalties imposed on WLI,
14 and included in the determination issued to him, was required for us to consider recommending relief
15 of those penalties, and we also explained this in writing thereafter, providing taxpayer a form which he
16 could use to submit a request for relief. Taxpayer has not submitted such a request on WLI's behalf,
17 and we thus have no basis on which to consider recommending relief of the penalties.

18 **OTHER DEVELOPMENTS**

19 None.

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21 Summary prepared by Thea C. Etheridge, Business Taxes Specialist II
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