

**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: )  
WILLIAM BRETT CORBIN ) Account Number: SR EA 53-003126  
) Case ID 434956  
Taxpayer ) Yorba Linda, Orange County

Type of Liability: Responsible person liability

Liability period: 04/01/04 – 09/30/04

<u>Item</u>	<u>Disputed Amount</u>
Responsible person liability	\$24,076
Penalty as determined and redetermined:	\$36,943.78
Payments by corporation	<u>-12,868.20</u>
Balance, protested	<u>\$24,075.58</u>
Penalty in dispute	\$24,075.58
Payments by taxpayer	<u>-16,231.53</u>
Balance Due	<u>\$7,844.05</u>

This matter was originally scheduled for Board hearing on October 21, 2010, but taxpayer did not respond to the Notice of hearing. Thus, the Board Proceedings Division informed taxpayer that this matter would be presented to the Board for decision without oral hearing. Subsequently, taxpayer contacted the Board Proceedings Division to request a Board hearing and to request that the hearing be postponed to allow taxpayer additional time to prepare for the hearing.

**UNRESOLVED ISSUES**

**Issue 1:** Whether taxpayer is personally liable as a responsible person pursuant to Revenue and Taxation Code section 6829 for the late-payment penalty originally incurred by Network Catalyst, Inc. We conclude taxpayer is personally liable.

Network Catalyst, Inc. (NCI) (SR Y EA 24-936249) sold computer hardware and software. Taxpayer was NCI's president until September 17, 2004, when the business was sold to MTM Technologies, Inc. (MTM) (SR OHB 100-552880). NCI's seller's permit was closed out effective March 31, 2005. At the time its business terminated, NCI had unpaid penalties for late payment of the second quarter 2004 (2Q04) and 3Q04 sales and use tax returns of \$36,757.90 and \$185.88,

1 respectively. The Sales and Use Tax Department (Department) concluded that taxpayer was  
2 personally liable for the amounts due from NCI pursuant to Revenue and Taxation Code section 6829  
3 and issued the Notice of Determination in dispute. Taxpayer did not file a timely petition for  
4 redetermination, but he filed an untimely appeal which the Department accepted as an administrative  
5 protest. After the determination was issued to taxpayer, the Department made some adjustments for  
6 mis-applied payments on behalf of NCI and for an income tax overpayment by NCI that was offset  
7 against the amount due, which fully paid the penalty applicable to 3Q04 and reduced the amount of  
8 penalty due from taxpayer for 2Q04 to \$24,075.58.

9 The Department determined that NCI's business was terminated no later than March 31, 2005,  
10 that the business had added or included sales tax reimbursement in its retail sales, and that taxpayer  
11 was a person responsible for NCI's sales tax compliance. These are three of the four conditions for  
12 imposing personal liability on taxpayer under section 6829 for the tax debts incurred by NCI, and they  
13 are undisputed. The fourth condition is that taxpayer must have willfully failed to pay or cause to be  
14 paid taxes due from NCI. Taxpayer contends that he is not personally liable for NCI's unpaid tax  
15 liabilities because NCI did not willfully fail to pay its tax liability timely.

16 A person is regarded as having willfully failed to pay or to cause to be paid taxes due where he  
17 or she had knowledge that the taxes were not being paid (or lacked knowledge in reckless disregard of  
18 his or her duty to know) and had the authority to pay taxes or cause them to be paid, but failed to do so  
19 (even if such failure was not the result of a bad purpose or evil motive). A former employee stated in  
20 response to a questionnaire that taxpayer maintained the sales records and other financial records for  
21 NCI (consistent with taxpayer's concession he was responsible for NCI's sales tax compliance), which  
22 is evidence that taxpayer knew of NCI's self-assessed tax liability for 2Q04 and its failure to pay that  
23 liability timely, nor does taxpayer argue otherwise.

24 Since taxpayer does not dispute that he had authority to pay the taxes due for 2Q04, or to direct  
25 others to do so, the remaining issue is whether NCI had sufficient funds to pay the taxes due. In that  
26 regard, taxpayer contends that NCI lacked funds to pay the tax because it had entered into a  
27 \$4.2 million contract with the County of Los Angeles that was not paid timely. According to taxpayer,  
28 the result was a cash flow shortage that delayed the tax payment. However, former NCI employees

1 indicated that the corporation paid its employees during 2Q04 and 3Q04. Also, at the appeals  
2 conference, taxpayer acknowledged that NCI continued to pay suppliers, rent, and utilities until it  
3 ceased business operations during 3Q04. Therefore, we find that funds were available to pay the sales  
4 tax liability, but NCI's management chose to pay other creditors instead. We find NCI's failure to  
5 timely pay the liability was willful, and that taxpayer is personally liable under section 6829 for the  
6 outstanding tax debts of NCI.

7 **Issue 2:** Whether taxpayer has established reasonable cause sufficient for relieving the late-  
8 payment penalty originally assessed against NCI. We conclude he has not.

9 Taxpayer submitted a declaration signed under penalty of perjury requesting relief of the  
10 penalty on NCI's behalf because NCI had a \$4.2 million contract with the County of Los Angeles, with  
11 payments to start in July 2004. According to taxpayer, the County of Los Angeles had previously  
12 placed similar orders with NCI, and NCI usually received payment within 45 to 60 days. However, the  
13 county informed NCI that, due to the California Legislature's failure to pass the state budget in a  
14 timely manner, this payment would be delayed. Taxpayer claims that NCI's failure to timely pay the  
15 amount due with its 2Q04 return was the result of the county's failure to pay NCI timely. Although  
16 taxpayer concedes that NCI received payments from other individuals, he states that the contract with  
17 the county represented its largest source of income. Taxpayer states that, as a result of the county's  
18 late payment, NCI necessarily split its receipts among all its obligations, including sales and use tax  
19 due the Board.

20 As a separate issue, taxpayer asserts that NCI's failure to pay the penalty is directly related to  
21 an erroneous statement by Department staff that relief of the penalty had been granted. Taxpayer states  
22 that, on September 20, 2004, after the acquisition of the business by MTM, NCI's controller filed a  
23 request for relief from the late-payment penalty for 2Q04. According to the Board's records, in a  
24 telephone conversation on October 7, 2004, Department staff told taxpayer's controller that the request  
25 for relief of penalty for the 2Q04 was granted. NCI then advised MTM that the relief had been granted  
26 and, in its payment to NCI to acquire the business, MTM included the amount of tax and interest due  
27 for 2Q04, but not the penalty. NCI used those funds to pay the tax and interest to the Board. In a letter  
28 dated October 22, 2004, however, the Department notified NCI that its statement by telephone had

1 been incorrect, and relief of the late-payment penalty had been denied. At that point, MTM was  
2 unwilling to reimburse NCI for the amount of the penalty since it had agreed to pay the tax and interest  
3 only. Taxpayer contends that NCI did not pay the penalty because, by the time it was notified of the  
4 Department's error, NCI was no longer in business and had no tangible assets. Thus, taxpayer asserts  
5 that NCI's failure to pay the penalty was due to its reliance on the Department's incorrect statement  
6 that relief from the penalty had been granted and MTM's subsequent refusal to pay the penalty. On  
7 that basis, taxpayer contends the late-payment penalty should be relieved, and the amounts paid against  
8 the penalty should be refunded.

9 As discussed above, taxpayer concedes that, even without payment from the county, NCI had  
10 funds available when the 2Q04 taxes became due, but decided to use those funds to pay other creditors  
11 rather than to submit even a partial tax payment to the Board for 2Q04. Thus, the failure to pay the tax  
12 timely was due to a conscious decision by NCI to await payment from the County of Los Angeles, and  
13 we find that there is no basis to grant relief of the penalty under these circumstances.

14 With respect to the oral statement made to the taxpayer that relief was granted, even if there  
15 was some basis for relief of penalty on this basis, the incorrect information was given to NCI orally,  
16 and was corrected in writing shortly thereafter. In any event, Revenue and Taxation Code section  
17 6596, the applicable provision for relief of this penalty, does not allow for relief of the penalty based  
18 on incorrect advice regarding relief of the penalty. We conclude there is no basis to recommend relief  
19 of the penalty for late payment of the return.

20 **OTHER DEVELOPMENTS**

21 None.

22  
23 Summary prepared by Rey Obligacion, Retired Annuitant  
24  
25  
26  
27  
28