

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:)
KAREN RENEE CULLINANE) Account Number: SR EH 53-003883
Taxpayer) Case ID 470168
Corona, Riverside County

Type of Liability: Responsible person liability

Liability period: 07/01/06 – 10/31/07

<u>Item</u>	<u>Disputed tax and penalties</u>	<u>Tax</u>	<u>Penalty</u>
Responsible person liability	\$43,343		
As determined:		\$62,372.00	\$6,237.20
Adjustment - Appeals Division		<u>-22,969.00</u>	<u>-2,296.90</u>
Proposed redetermination, protested		<u>\$39,403.00</u>	<u>\$3,940.30</u>
Proposed tax redetermination		\$39,403.00	
Interest through 06/30/11		\$12,958.42	
Late payment penalty		<u>3,940.30</u>	
Total tax, interest, and penalty		\$56,301.72	
Payments		<u>- 2,671.00</u>	
Balance Due		<u>\$53,630.72</u>	
Monthly interest beginning 7/01/11		<u>\$214.27</u>	

UNRESOLVED ISSUES

Issue 1: Whether taxpayer is personally liable as a responsible person for the unpaid liabilities of Cullinane Group, Inc. (CGI) pursuant to Revenue and Taxation Code section 6829 for the period July 1, 2006, through October 31, 2007. We conclude taxpayer is not personally liable for the period July 1, 2006, through December 31, 2006, but is personally liable for the remainder of the liability period.

CGI held a seller's permit to operate Charo Chicken Corona, a restaurant, from January 28, 2005, until October 31, 2007. At the time its business terminated, CGI had unpaid liabilities related to non-remittance returns.

1 The Department determined that CGI's business was terminated on or about October 31, 2007,
2 and that the business had collected sales tax reimbursement with respect to its retail sales. These are
3 two of the four conditions for imposing personal liability on taxpayer for the tax debts incurred by
4 CGI, and they are undisputed. The other two conditions are that taxpayer must have been responsible
5 for sales tax compliance by CGI, and taxpayer must have willfully failed to pay or to cause to be paid
6 taxes due from CGI.

7 For the period July 2006 through January 2007, the taxpayer was vice-president and secretary
8 of CGI, and CGI's other corporate officer was taxpayer's husband, who was the president and
9 treasurer. Taxpayer stated that during this period she had been prevented from performing her duties
10 to file and pay taxes, which we concluded was an admission that her duties included ensuring CGI's
11 compliance with the Sales and Use Tax Law. Thus, we find that taxpayer was a responsible person
12 within the meaning of section 6829 for this period. However, taxpayer provided evidence that her
13 husband prevented her access to CGI's records, preventing her from fulfilling her duties related to the
14 business, including filing and paying taxes. We therefore conclude that taxpayer did not willfully fail
15 to pay or to cause to be paid the taxes incurred for the period through December 31, 2006 (the last
16 quarter of which was due on January 31, 2007).

17 By court order, taxpayer took over sole operation of CGI in February 2007, which taxpayer
18 states was just so she could sell the business. At that point, she clearly was a responsible person for
19 CGI's sales and use tax compliance. The remaining condition for imposing liability under section
20 6829, that taxpayer must have willfully failed to pay or to cause to be paid taxes due from CGI,
21 requires that taxpayer's failure was the result of an intentional, conscious, and voluntary course of
22 action (even if without a bad purpose or evil motive). For the periods beginning February 2007,
23 taxpayer does not dispute that she knowingly reviewed, signed, and filed CGI's non-remittance returns.
24 Thus, taxpayer clearly knew that taxes due were not being paid, and as the sole person in control of
25 CGI, taxpayer clearly had the authority to pay or to cause to be paid the taxes due. During this period,
26 CGI was making substantial sales, as evidenced by its reported gross receipts, and made payments to
27 vendors and suppliers during the period at issue. We find that funds were available to pay the sales tax
28 liability, but taxpayer made a conscious choice to use CGI's available funds, which included sales tax

1 reimbursement, to pay other expenses, rather than the taxes due to the Board. Thus, we conclude that
2 taxpayer is personally liable pursuant to section 6829 for CGI's tax debts becoming due after taxpayer
3 took over control of CGI in February 2007. Since the return for the first quarter 2007 was due after
4 that time, on April 30, 2007, we find that taxpayer is liable for the tax debt incurred on and after
5 January 1, 2007, through close out on October 31, 2007.

6 **Issue 2:** Whether taxpayer has established reasonable cause sufficient for relieving the late-
7 payment penalties originally assessed against CGI. We conclude that she has not.

8 Taxpayer was advised orally during the appeals conference and by writing thereafter that we
9 could consider recommending relief of these penalties if she submitted a statement on CGI's behalf
10 setting forth the facts supporting relief, signed under penalty of perjury. Taxpayer has not submitted
11 the requisite statement or otherwise requested relief of penalties. Therefore, we have no basis on
12 which to consider recommending relief of any penalties.

13 **OTHER DEVELOPMENTS**

14 None.

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16 Summary prepared by Thea Etheridge, Business Taxes Specialist II
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