

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 WILLIAM L. DONALDSON) Account Number: SC OHB 53-004272
) Case ID 468651
 6 Petitioner) Summerville, South Carolina

7 Type of Liability: Responsible person liability

8 Disputed Liability Period: 10/1/01 – 6/30/02

9 Item Amount

10 Responsible person liability \$ 18,322

	<u>Tax</u>	<u>Penalties</u>
11 As determined	\$32,678.84	\$7,969.70
12 Post-SD&R adjustment	<u>-19,730.91</u>	<u>-2,595.29</u>
13 Proposed redetermination, protested	<u>\$12,947.93</u>	<u>\$5,374.41</u>
14 Proposed tax redetermination	\$12,947.93	
15 Interest through 05/31/12	12,406.43	
16 Penalty late filing of returns	<u>3,664.20</u>	
17 Total tax, interest, and penalties	<u>\$29,018.56</u>	
Monthly interest beginning 06/01/12	<u>\$ 75.53</u>	

18 UNRESOLVED ISSUES

19 **Issue 1:** Whether petitioner is personally liable as a responsible person under Revenue and
 20 Taxation Code section 6829 for the unpaid liabilities of Goer Manufacturing Co., Inc. for the period
 21 October 1, 2001, through September 30, 2002. We conclude that he is.

22 Goer Manufacturing Co., Inc. (Goer) (SC OHB 30-622518), a manufacturer of store fixtures
 23 and merchandising equipment, filed Chapter 11 bankruptcy and was purchased out of that bankruptcy
 24 by Leggett-Platt, Inc. (LPI) on July 10, 2003, at which time Goer had outstanding liabilities for the
 25 fourth quarter 2001 (4Q01), 3Q02 (penalties only), 4Q02 (penalties only), 2Q03, and 3Q03 (through
 26 July 9, 2003) based on sales and use tax returns filed with no or partial remittance. The Sales and Use
 27 Tax Department (Department) issued a Notice of Determination to petitioner pursuant to Revenue and
 28 Taxation Code section 6829 for the entire liability. In the SD&R, we conclude that petitioner was no

1 longer responsible for Goer's sales and use tax compliance after December 16, 2002, and thus
2 recommend that the liability incurred by Goer for 4Q02, 2Q03, and 3Q03 be deleted from the
3 determination issued to petitioner. Accordingly, the amounts at issue here are Goer's unpaid liabilities
4 for 4Q01 and 3Q02.

5 Petitioner concedes that Goer's corporate business was terminated and that sales tax
6 reimbursement was collected with respect to its retail sales of tangible personal property, which are
7 two of the four conditions for holding petitioner personally liable under section 6829. However,
8 petitioner protests the two remaining conditions, that he was responsible for Goer's sales and use tax
9 compliance, and that he willfully failed to pay or to cause to be paid the subject liabilities. Petitioner
10 asserts that, although he held the position of CFO or controller during the periods 4Q01 and 3Q02 (and
11 past the due date of the taxes for 3Q02), he was not involved in filing Goer's returns or payment of tax
12 because he was primarily involved in the implementation of Goer's new computer system, cost
13 accounting, and inventory control. Further, petitioner asserts that the terms CFO and controller were
14 merely titles. Petitioner also points out that he did not sign the returns for either of these quarters, and
15 he claims that his role pertaining to payments was limited. Petitioner states that the assistant
16 controller, Sara Hanna, was responsible for filing returns and requesting approval of the payments of
17 tax, and the assistant treasurer, Dennis Ziegler, was responsible for approving the request and
18 transferring payment by wire to Ms. Hanna. Petitioner states that he only got involved in this process
19 if a problem occurred. Moreover, petitioner asserts that the Department admitted at the appeals
20 conference that it has no direct evidence that petitioner knew or had the ability to pay the taxes at issue
21 when they became due, or was involved in the payment of invoices or wages for Goer. Petitioner
22 disputes the Department's assertion that he should have known the taxes at issue were due by virtue of
23 his position as a CFO and controller, arguing that the conclusion is not supported by any evidence and
24 that, in actuality, petitioner had no day-to-day responsibilities with respect to Goer's tax obligations.

25 We find that the evidence shows that petitioner was a responsible person for purposes of
26 section 6829, including bankruptcy documents, a March 25, 2009 letter from LPI, petitioner's
27 admission that he was Goer's CFO and controller at the time taxes became due for 4Q01 and 3Q02,
28 and the questionnaires completed by Mr. Ziegler and by James Inglis (Goer's sales manager).

1 Additionally, petitioner signed returns for periods *prior* to 4Q01, which is evidence that he was
2 responsible for Goer's sales and use tax compliance at the time those earlier returns were filed, and
3 petitioner has not presented any persuasive evidence that his responsibilities and duties subsequently
4 changed. We also find petitioner has not provided evidence to substantiate his assertion that the terms
5 CFO and controller were titles only, which did not accurately describe his responsibilities. As CFO
6 and controller, we conclude petitioner was responsible to oversee Goer's sales and use tax compliance,
7 even though he may have delegated certain duties to other employees.

8 Regarding the requirement for willfulness, one element is knowledge that the tax was due.
9 Petitioner was the CFO and controller, and he has conceded that he knew Goer collected sales tax
10 reimbursement. Petitioner also clearly understood the requirement to report and pay sales taxes on a
11 quarterly basis, and, as noted previously, petitioner has not provided any persuasive evidence that his
12 duties had changed dramatically from the period for which he signed several of Goer's returns. We
13 simply do not believe the facts support a finding that he was ignorant that the returns for 4Q01 and
14 3Q02 were not timely filed and paid, and we thus conclude that he had the requisite knowledge. We
15 also find that, as Goer's CFO and controller, petitioner had the authority to pay or direct payment of
16 Goer's tax obligations, which is consistent with his concession that, prior to December 16, 2002, he
17 had the ability to get involved in sales and use tax matters if a problem occurred. Goer paid wages and
18 made payments to suppliers and other creditors during the relevant periods, and we thus conclude that
19 petitioner, as Goer's CFO and controller, was paying or directing the payment of expenses of operating
20 a business for 4Q01 and 3Q02, thereby making the intentional, conscious, and voluntary decision to
21 pay other creditors rather than the tax liabilities at issue here. We find that all requirements for
22 imposing personal liability on petitioner for the tax liabilities incurred by Goer for 4Q01 and 3Q02
23 have been satisfied.

24 **Issue 2:** Whether relief of the late filing penalties for the period October 1, 2001, through
25 September 30, 2002, is warranted. We conclude relief is not warranted.

26 Petitioner filed a request for relief of the penalties in which he reiterates the contentions he
27 raised in relation to his personal liability for Goer's unpaid taxes. These contentions do not offer an
28 explanation for *Goer's* failure to pay the tax-related liabilities at issue when they became due. As such,

1 they do not provide reasonable cause for relieving Goer of the late filing penalties at issue.

2 **RESOLVED ISSUES**

3 In addition to our recommendation to delete the liabilities incurred for 4Q02, 2Q03, and 3Q03,
4 we also find that Goer's failure to participate in the amnesty program was due to reasonable cause
5 because Goer ceased to exist before the amnesty program commenced, and no person or entity
6 continued to act on its behalf during the period when it could have applied for amnesty. Accordingly,
7 we recommend that relief of the amnesty interest penalty of \$1,710.21 (applicable to 4Q01) be granted,
8 provided that, within 30 days from the date of the notice of redetermination, petitioner either pays in
9 full the tax and interest due for 4Q01 or enters into a qualifying installment plan to do so and
10 successfully completes that payment plan.

11 **OTHER MATTERS**

12 None.

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