

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
JAMES EUGENE GOLDSTEIN )  
Petitioner )  
Account Number: SR AC 53-003690  
Case ID 442332  
Woodland Hills, Los Angeles County

Type of Liability: Responsible person liability

Liability period: 01/01/03 – 04/24/07

<u>Item</u>	<u>Disputed Amount</u>
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Responsible person liability	\$500,652
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	<u>Tax</u>	<u>Penalty</u>
As determined and protested:	<u>\$369,810.62</u>	<u>\$130,841.59</u>

Proposed tax redetermination	\$369,810.62
Interest through 04/30/12	206,450.48
Late-prepayment penalties	243.60
Fraud penalty	92,578.10
Finality penalties	<u>38,019.89</u>
Total tax, interest, and penalty	<u>\$707,102.69</u>

Monthly interest beginning 05/01/12	<u>\$ 2,157.23</u>
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This matter was scheduled for Board hearing on October 21, 2010, but was deferred pending issuance of an SD&R to respond to a request for reconsideration (RFR) filed by the Sales and Use Tax Department (Department) regarding the related case, Nicholas Moore (case ID 442059). The Department subsequently withdrew its RFR, and an SD&R was not issued. The matter was rescheduled for hearing on January 31, 2012, but was postponed at the request of the representative in the related case because of the representative's military service in Afghanistan.

**UNRESOLVED ISSUES**

**Issue 1:** Whether petitioner is personally liable as a responsible person for the unpaid liabilities of National Imaging Company, Inc. (NIC) (SR AC 97-957888) pursuant to Revenue and Taxation Code section 6829. We conclude he is.

1           NIC operated a gas station, convenience store, and auto repair shop until April 24, 2007. When  
2 the business ceased operating, it had unpaid sales and use tax liabilities related to two notices of  
3 determination. The Department concluded petitioner was personally liable as a responsible person for  
4 the liabilities incurred by NIC, pursuant to Revenue and Taxation Code section 6829.<sup>1</sup> Petitioner does  
5 not dispute that NIC's business was terminated or that the business collected sales tax reimbursement  
6 with respect to its retail sales, but does dispute the two remaining conditions for imposing personal  
7 liability: that petitioner was responsible for sales tax compliance by NIC; and that he willfully failed to  
8 pay or to cause to be paid taxes due from NIC.

9           According to petitioner, he was only a manager of the service station and the only person  
10 responsible for NIC's sales and use tax compliance was Nicholas Moore, who petitioner asserts was  
11 the sole officer and shareholder of NIC during the entire liability period. Petitioner states that  
12 Mr. Moore handled all of the bookkeeping, bills, and tax matters, even after petitioner helped  
13 Mr. Moore open a new bank account and even after Mr. Moore became seriously ill in May 2006.

14           Petitioner was the president, chief executive officer, secretary, and chief financial officer of  
15 NIC during the period July 1, 2005, through at least May 24, 2007, as evidenced by NIC's Statements  
16 of Information filed with the Secretary of State. Although petitioner claims those titles were entered  
17 on a blank Statement of Information he had signed, which Mr. Moore later completed and filed,  
18 petitioner concedes that he agreed to identify himself as an officer of NIC with the Secretary of State.  
19 Petitioner signed several sales and use tax returns and at least 10 NIC checks payable to the Board, and  
20 communicated with the Board regarding NIC's sales and use tax liability throughout the audit period.  
21 Finally, NIC's landlord identified petitioner as the Mobil station operator. We find that petitioner, as  
22 corporate president, had broad implied and actual authority to do all acts connected with the operation  
23 of NIC, including ensuring its compliance with the Sales and Use Tax Law, and that the other available  
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26 <sup>1</sup> The Department also issued a determination under section 6829 to Mr. Nicholas Anthony Moore for the same unpaid  
27 liabilities, and he filed a timely petition for redetermination (Case ID 442059). We found Mr. Moore is liable as a  
28 responsible person for NIC's liabilities prior to July 11, 2005, but not thereafter. Mr. Moore's appeal of that decision is  
scheduled for hearing on the same date as the instant appeal.

1 facts show he was responsible for such compliance. We thus find further that petitioner was a  
2 responsible person as defined by section 6829.

3 A person is regarded as having willfully failed to pay taxes, or to cause them to be paid, where  
4 he or she had knowledge that the taxes were not being paid and had the authority and ability to pay  
5 taxes or to cause them to be paid, but failed to do so. Various notices describing tax liabilities were  
6 mailed to NIC's business address throughout the liability period. Also, the understatement of tax  
7 should have been readily apparent to petitioner since the available records clearly show that NIC's cost  
8 of fuel purchases significantly exceeded its reported taxable sales. We find that petitioner had actual  
9 knowledge of the tax deficiency, and that petitioner had authority to pay or to cause to be paid the  
10 taxes due. During the applicable periods, NIC was making substantial sales, and it made payments to  
11 vendors and suppliers. Since funds were available to pay the sales tax liability but those funds were  
12 used instead to pay other creditors, we find that petitioner's failure to pay NIC's sales and use taxes or  
13 cause them to be paid was willful. In summary, we conclude that all conditions have been satisfied for  
14 imposing personal liability on petitioner under section 6829.

15 **Issue 2:** Whether adjustments are warranted to NIC's understatement established by audit for  
16 the period January 1, 2004, through April 24, 2007. We recommend no adjustments.

17 Since NIC provided no records for audit, the Department utilized information from other  
18 sources. Petitioner asserts that the maximum understatement is tax of \$60,000, and that the  
19 Department improperly utilized statistics regarding average markups and failed to examine NIC's  
20 federal income tax returns.

21 We find that the Department used a recognized and standard audit procedure and utilized the  
22 best available information to establish taxable sales considering that NIC provided no records for audit.  
23 We reject petitioner's contention that NIC's books and records show a maximum understatement of tax  
24 of \$60,000.00 since petitioner has not provided any information regarding his computations or any  
25 supporting records. We also reject petitioner's assertion that NIC's profit margin for fuel sales was  
26 only seven to eight cents per gallon since that allegation is directly contradicted by the Department's  
27 observation of the station's selling prices. In addition, we note the Department did review the only  
28 income tax return available. Accordingly, we recommend no adjustment.

