

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:)
EDMUNDO GONZALEZ) Account Number: SR FHA 53-004407
Petitioner) Case ID 470281
Palm Springs, Riverside County

Type of Liability: Responsible person liability
Liability period: 1/1/06 – 3/31/08

<u>Item</u>	<u>Disputed Amount</u>		
Responsible person liability	\$79,783		
		<u>Tax</u>	<u>Penalty</u>
As determined and protested		\$ 72,530.00	<u>\$7,253.00</u>
Interest through 6/30/11		24,661.43	
Finality penalties		<u>7,253.00</u>	
Total tax, interest, and penalties		<u>\$104,444.43</u>	
Monthly interest beginning 7/1/11		<u>\$362.65</u>	

UNRESOLVED ISSUES

Issue 1: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Intellitruess of California, LLC, seller’s permit SR FHA 100-704584 (Intellitruess), pursuant to Revenue and Taxation Code section 6829. We conclude petitioner is personally liable.

Intellitruess manufactured and sold roof and floor trusses to the construction industry, and petitioner was its CEO. On behalf of Intellitruess, petitioner filed annual tax returns for years 2006 and 2007 and a quarterly tax return for the first quarter 2008 (1Q08), collectively reporting and paying \$14,059 tax. Subsequently, on June 12, 2008, petitioner filed amended tax returns for the same periods, collectively reporting \$86,589 tax, but did not include payment of any of the \$72,530 additional tax. On June 18 and 19, 2008, the Sales and Use Tax Department (Department) issued Notices of Determination (NOD’s) to Intellitruess for the self-reported additional taxes, and on July 18

1 and 19, 2008, the respective NOD's became final without payment, and finality penalties of \$7,253.00
2 accrued.

3 The Department found petitioner personally liable for Intellitruess's unpaid tax liabilities under
4 section 6829, and issued an NOD to petitioner on November 14, 2008. Only one of the four conditions
5 for imposing section 6829 liability is disputed, whether petitioner willfully failed to pay or to cause to
6 be paid Intellitruess's tax liabilities. Petitioner argues that Intellitruess had insufficient funds to pay its
7 taxes as a result of significant miscalculations of costs and expected profits. Petitioner also contends
8 that, even if he were personally liable for Intellitruess's unpaid tax debts, such liability has been
9 discharged as a result of his petition for Chapter 7 bankruptcy filed on December 24, 2008, and the
10 resulting discharge order issued on April 7, 2009.

11 Willfulness for purposes of liability pursuant to section 6829 means that the failure to pay or to
12 cause to be paid the tax due was the result of an intentional, conscious, and voluntary course of action
13 (even if without a bad purpose or evil motive). A person is regarded as having willfully failed to pay
14 taxes, or to cause them to be paid, where he or she had knowledge that the taxes were not being paid
15 and had the authority to pay taxes or cause them to be paid, but failed to do so.

16 Here, petitioner personally filed the original tax returns for Intellitruess along with payment of
17 the reported taxes, and he also personally filed the amended tax returns reporting the additional taxes,
18 without payment of those additional taxes. Thus, it is clear that petitioner had actual knowledge of the
19 unpaid tax liabilities of Intellitruess. It is also clear that petitioner, the CEO of Intellitruess, had the
20 authority to cause the LLC to pay the taxes due.¹ The final element of willfulness, then, is the
21 availability of sufficient funds to pay the tax due. This, of course, does not mean sufficient funds to
22 pay taxes after payment of other debts, but rather simply sufficient funds to pay the taxes due.
23 Intellitruess remained in business during the entire liability period making sales and collecting sales tax
24 reimbursement on those sales, paying business rent, rentals on equipment, at least some salaries, and
25

26 ¹ IRIS contains a note added on July 3, 2008, when the permit of Intellitruess was closed out (effective March 31, 2008), to
27 summarize the Department's telephone discussion with petitioner concerning the close out of the permit. Petitioner
28 explained that his son, Gerardo Gonzeles, was just helping out and was never involved in the "business affairs" of
Intellitruess even though he signed the seller's permit application. Petitioner stated that petitioner was the sole member
manager of the LLC who had control of the business.

