

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:)
MARK DIETER HANF)
Petitioner)
Account Number: SR CH 53-003838
Case ID 449688
Novato, Marin County

Type of Liability: Responsible person liability
Liability period: 04/01/04 – 05/03/05

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Responsible person liability	\$181,734		
As determined and protested:		<u>\$162,484.47</u>	<u>\$19,249.10</u>
Proposed tax redetermination		\$162,484.47	
Interest through 11/30/10		87,561.16	
Late payment penalties		<u>19,249.10</u>	
Total tax, interest, and penalty		\$269,294.73	
Payments		<u>- 4,290.24</u>	
Balance Due		<u>\$265,004.49</u>	
Monthly interest beginning 12/1/10		<u>\$ 922.80</u>	

UNRESOLVED ISSUES

Issue 1: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Delta Pacific Yachts, Inc. pursuant to Revenue and Taxation Code section 6829. We conclude petitioner is personally liable.

Delta Pacific Yachts, Inc. (Delta) (SR CH 97-670312) was a retailer and broker of yachts from March 1, 2000, through May 3, 2005. At the time its business terminated, Delta had unpaid liabilities related to non-remittance sales and use tax returns filed for the period April 1, 2004, through May 3, 2005. The Sales and Use Tax Department (Department) determined that Delta’s business was terminated on or about May 3, 2005, and that the business had added or included sales tax reimbursement in its retail sales. The Department found that petitioner, who was the corporate president of Delta throughout the liability period, was a person responsible for managing the financial

1 affairs of Delta, including Delta's sales and use tax compliance. These are three of the four conditions
2 for imposing personal liability on petitioner for the tax debts incurred by Delta, and they are
3 undisputed. The other condition, which petitioner does dispute, is that petitioner must have willfully
4 failed to pay or to cause to be paid taxes due from Delta. The Department determined that petitioner
5 willfully failed to pay, or to cause to be paid, Delta's tax liabilities because petitioner had authority to
6 cause the taxes to be paid and Delta had funds available at the time the subject taxes became due but
7 chose to pay other creditors. Therefore, the Department found that all four conditions for holding
8 petitioner personally liable for Delta's tax-related liabilities have been met, and it issued the Notice of
9 Determination in dispute.¹

10 Petitioner contends he is not personally liable for Delta's unpaid tax liabilities because he did
11 not willfully fail to pay or to cause to be paid the taxes due from Delta during the period at issue.
12 Specifically, petitioner contends that when he became Delta's president in 2003, he assumed the
13 management of its day-to-day activities due to his father's sudden illness, which rendered his father
14 incapable of running any of his companies. Petitioner asserts that, prior to that time, he worked in the
15 back office at Delta and had no management duties. Although petitioner conceded at the appeals
16 conference that he was aware Delta owed taxes to the Board for the period April 1, 2004, through
17 May 3, 2005, which were not paid when due, he stated that, during that time, he received no
18 compensation from Delta and, instead, did everything in his power to finance, leverage, or sell off
19 other asserts unrelated to Delta, including his own personal assets, to pay off Delta's liabilities to the
20 Board and others. Further, petitioner asserts that, during the time the taxes at issue became due,
21 Delta's vice-president, Mr. Michael Vasquez, embezzled money from Delta, which contributed to the
22 failure of Delta's business and its inability, due to lack of funds, to pay the taxes due to the Board.

23 Willfulness for these purposes means that the failure was the result of an intentional, conscious,
24 and voluntary course of action, even if not done with a bad purpose or evil motive. A person is
25 regarded as having willfully failed to pay taxes, or to cause them to be paid, where he or she had
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27 ¹ The Department also issued a Notice of Determination to Horst Hanf pursuant to section 6829 for the same liability.
28 Since Mr. Hanf did not submit a petition for redetermination, the determination issued to him is now final.

1 knowledge that the taxes were not being paid (or lacked knowledge in reckless disregard of his or her
2 duty to know) and had the authority to pay the taxes or to cause them to be paid, but failed to do so.
3 Petitioner signed the returns that were filed with no remittance for 2Q04, 3Q04, and 4Q04, which, we
4 find, clearly establishes that he knew Delta owed tax for those periods. In any event, at the appeals
5 conference, petitioner admitted he was aware Delta owed taxes to the Board for the period April 1,
6 2004, through May 3, 2005, which were not paid when they were due. Thus, the only remaining issue
7 is whether petitioner was able to pay, or to cause to be paid, the taxes when due.

8 Based on petitioner's own statement of the facts when he explained how he was trying to pay
9 off Delta's liabilities to the Board and to others, it is clear that he was the person who decided which of
10 Delta's bills were to be paid, in what amount, and when. Moreover, petitioner has not presented any
11 evidence that his authority to pay taxes was limited in any way. Accordingly, we find petitioner had
12 authority to cause the taxes due to be paid. Regarding whether Delta had sufficient funds to pay the
13 taxes due, we note that during the applicable periods, Delta made substantial sales, as evidenced by its
14 reported gross receipts, and made payments totaling hundreds of thousands of dollars to vendors and
15 other creditors, as reflected in its check registers. Thus, we find that funds were available to pay the
16 sales tax liability, but that petitioner chose to pay other creditors instead. Consequently, we find
17 petitioner made an intentional, conscious, and voluntary decision to pay those creditors instead of the
18 Board, and the failure to pay taxes to the Board was willful. In summary, we conclude that all
19 conditions have been satisfied for imposing personal liability on petitioner under section 6829 for the
20 outstanding tax liabilities of Delta.

21 **Issue 2:** Whether petitioner has established reasonable cause sufficient for relieving the late-
22 payment penalties originally assessed against Delta. We conclude that he has not.

23 There is no statutory or regulatory authority for relieving these penalties in section 6829
24 determinations, but if petitioner could show that the penalty should be relieved as to Delta under
25 Revenue and Taxation Code section 6592, the relief would also inure to petitioner's benefit. Petitioner
26 submitted a request for relief, signed under penalty perjury, but the grounds stated in the request for
27 relief do not address why *Delta* failed to timely pay the taxes at issue. Rather, the request reiterates
28 petitioner's contention that he should not be held personally liable. Accordingly, petitioner has not

1 established reasonable cause for Delta's failure to pay the amounts due, as reported on returns.
2 Consequently, we find no basis for relief from the penalties at issue.

3 **OTHER DEVELOPMENTS**

4 None.

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