

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Administrative Protest)
 4 Under the Sales and Use Tax Law of:)
 5 CRAIG ROBERT HANSEN) Account Number: SR EHC 53-005306
 6) Case ID 518238
 7 Taxpayer) La Quinta, Riverside County

8 Type of Liability: Responsible person liability

9 Liability period: 7/1/08 – 9/30/08

10 Item Disputed Amount

11 Responsible person liability \$202,485

Tax

Penalty

12 As determined \$203,259.71 \$20,336.50

13 Concurred in (est.) - 19,191.60 - 1,919.16

14 Balance, protested \$184,068.11 \$18,417.34

15 Tax as determined \$203,259.71

16 Interest through 10/31/12 41,979.83

17 Finality penalty 20,336.50

18 Total tax, interest, and penalty \$265,576.04

19 Payments 163,285.40

20 Balance Due \$102,290.64

21 Monthly interest beginning 11/1/12 \$199.87

22 A Notice of Appeals Conference was mailed to taxpayer's address of record, and the notice was
 23 not returned by the Post Office. Taxpayer did not respond to the notice or appear at the appeals
 24 conference, which was held as scheduled. We thereafter sent taxpayer a letter offering him the
 25 opportunity to provide any additional arguments and evidence in writing he wished us to consider, but
 26 he did not respond.

27 **UNRESOLVED ISSUE**

28 **Issue:** Whether taxpayer is personally liable for the unpaid liabilities of HLS Holdings, LLC
 pursuant to Revenue and Taxation Code section 6829. We conclude taxpayer is personally liable.

1 HLS Holdings, LLC dba Kia of La Quinta (HLS), a limited liability company, held seller's
2 permit SR EHC 100-353469 from March 1, 2004, through September 30, 2008, for the operation of a
3 new and used automobile dealership. At the time its business terminated, HLS had unpaid liabilities
4 related to its third quarter 2008 sales and use tax return filed with no remittance. The Sales and Use
5 Tax Department (Department) determined that HLS terminated its business on or about September 30,
6 2008, and that HLS collected sales tax reimbursement on the selling price of tangible personal
7 property. These are two of the four conditions for imposing personal liability on taxpayer for the tax
8 debts incurred by HLS, and they are undisputed. The other two conditions, which are disputed, are
9 that taxpayer must have been responsible for sales tax compliance by HLS, and taxpayer must have
10 willfully failed to pay or to cause to be paid taxes due from HLS. The Department concluded that
11 taxpayer was a responsible person under section 6829 because taxpayer signed several documents
12 related to the business operation and was identified as a person responsible for HLS's sales and use tax
13 matters. The Department also determined that taxpayer willfully failed to pay or to cause to be paid
14 HLS's tax liabilities because HLS had funds available at the time the taxes became due and chose to
15 pay other creditors.

16 Taxpayer contends that he only owned 20 percent of HLS, was not in control of HLS's
17 finances, and was told that HLS only had sales and use tax liability for September 2008. Taxpayer
18 therefore contends he should be held responsible only for 20 percent of HLS's liability for September
19 2008.

20 We note first that whether taxpayer is liable under section 6829 is not dependent on ownership,
21 and there is no basis for prorating his liability based on his ownership interest in HLS. Taxpayer is
22 liable under section 6829 for the full amount due if he was a responsible person for sales and use tax
23 compliance, and if he willfully failed to pay or to cause to be paid the taxes due. This is true even if
24 someone else is also liable under section 6829. If, instead, taxpayer were to establish that he was not a
25 responsible person for HLS's sales and use tax compliance, or that he did not willfully fail to pay or to
26 cause to be paid the taxes due, he would not be liable under section 6829 even though he had an
27 ownership interest in HLS.

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1 Taxpayer signed HLS's seller's permit application as a member, both the former finance
2 manager and the former lot supervisor identified taxpayer as a person responsible for HLS's sales and
3 use tax matters at the time HLS ceased its business operations, and taxpayer has not provided evidence
4 showing that he was not responsible for HLS's sales and use tax compliance. We find that this
5 condition for imposing section 6829 liability on taxpayer is satisfied. The remaining issue is whether
6 taxpayer willfully failed to pay or to cause to be paid the taxes due for the third quarter 2008.

7 The willfulness requirement of section 6829 liability is satisfied if the person had knowledge of
8 the tax due, and the authority and ability to pay or to cause to be paid that tax due. In his appeal,
9 taxpayer states that "I ... was told the only month owed was 9/08" and that "I should be liable only for
10 9/08 at 20% of the total tax liability." Thus, taxpayer concedes knowledge of at least some of the taxes
11 due. Based on this admission and our conclusion that he was a responsible person for sales and use tax
12 compliance, we conclude that the evidence is sufficient to show that taxpayer was aware of the tax due
13 for the third quarter 2008. (We note in this regard that taxpayer's failure to participate in the appeals
14 conference process means that we were not able to elicit any further information from him.)
15 Regarding taxpayer's authority to pay the taxes due, we note that HLS's former manager indicated that
16 taxpayer signed employee paychecks at HLS. In the absence of further contrary information, we
17 conclude that this is sufficient evidence to show that taxpayer had the authority to issue payments on
18 behalf of HLS. Regarding taxpayer's ability to pay, that is, sufficient funds to pay, not only did HLS
19 collect sales tax reimbursement during the third quarter 2008 to cover all of the tax asserted against
20 taxpayer for that quarter, we note that HLS made payments to its supplier, Kia Motors, and to its
21 employees during and after the period in issue. We find that HLS had sufficient funds to pay the taxes
22 due. We therefore conclude that taxpayer willfully failed to pay or to cause to be paid the sales and
23 use taxes owed by HLS for the third quarter 2008, and that all conditions for imposing personal
24 liability on taxpayer for HLS's third quarter 2008 liability have been satisfied.

25 **OTHER MATTERS**

26 HLS incurred a penalty because it failed to timely pay the amount it reported as due on its
27 return for the third quarter 2008, and this penalty is included as part of the assessment to taxpayer. We
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1 informed taxpayer that he could request relief of this penalty on behalf of HLS, but he has not done so.
2 We therefore have no basis to consider whether to recommend relief of this penalty.

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Summary prepared by Pete Lee, Business Taxes Specialist II