

## 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: )

Account Number: SR EA 53-004659

5 MOHAMMAD HONARKAR )

Case ID 482560

6 Petitioner )

Aliso Viejo, Orange County

7  
8 Type of Liability: Responsible person liability

9 Liability period: 10/01/04 – 07/31/05

10 Item Disputed Amount

11 Responsible person liability \$29,459

TaxPenalty

12 As determined \$240.00 \$34,458.80

13 Adjustment - Sales and Use Tax Department 00.00 - 5,000.00

14 Proposed redetermination \$240.00 \$29,458.80

15 Less concurred -240.00 00.0015 Balance, protested \$ 00.00 \$29,458.80

16 Proposed tax redetermination \$ 240.00

16 Interest 949.28

17 Late payment/filing and EFT penalty 12,190.60

17 Late prepayment penalty 1,200.00

18 Failure to file prepayment penalty 3,360.90

18 EFT penalty 12,670.00

19 Finality penalties 37.30

20 Total tax, interest, and penalty \$30,648.08

20 Payments - 240.0021 Balance Due \$30,408.08

## 22 UNRESOLVED ISSUE

23 **Issue:** Whether relief of penalties is warranted. We find no basis to recommend relief.24 GSM Wireless, Inc. (GSM) sold cellular phones and offered repair and installation services  
25 from October 15, 1998, through April 30, 2006. At the time its business terminated, GSM had unpaid  
26 liabilities related to sales and use tax returns and prepayment forms it had filed and two Notices of  
27 Determination issued because of computation errors on returns. The Sales and Use Tax Department  
28 (Department) concluded that petitioner is personally responsible for GSM's unpaid liabilities, and

1 petitioner has not disputed that finding, except for a recent email in which he disputes that finding as to  
2 \$24.00 of the liability, as discussed below under “Other Developments.”

3 At the appeals conference, petitioner protested only the penalty for late payment for the fourth  
4 quarter 2004 (4Q04).<sup>1</sup> Petitioner argued that the penalty should not have been assessed against GSM  
5 because he had, in fact, timely mailed the return. As support, petitioner provided a signed declaration  
6 that he had placed the return, along with a check, “in the United States mail at a post office, mail box  
7 or other like facility located at Brenexus Complex” at or around 3:00 p.m. on the day the return was  
8 due (a Monday). However, the postmark date on the envelope is February 4, 2005 (a Friday), four  
9 days after that due date of the return. We find it very implausible that an envelope placed in an actual  
10 mailbox in service on a Monday would not be processed and postmarked until four days later.

11 Accordingly, we are not persuaded by petitioner’s declaration, and we conclude that the evidence is  
12 not sufficient to conclude that the return and payment for 4Q04 were mailed timely. As such, the  
13 penalties for late filing and late payment (limited to 10 percent) were properly imposed. With respect  
14 to relief of the penalty, GSM had a history of making untimely payments and prepayments.  
15 Accordingly, we conclude that relief of the late penalties is not warranted. In any event, petitioner has  
16 stated no basis for relief of the penalty for failure to pay by EFT, and thus a 10 percent penalty will be  
17 applicable for 4Q04 regardless of the actual date of mailing.

18 On December 9, 2011, petitioner filed a request for relief from all the penalties at issue, stating,  
19 “Please understand that I had a hardship and [even though] my company was under huge financial  
20 problem, I have paid all sales tax collected to the board.” In addition to the penalties discussed above  
21 for the late filing and payment and failure to pay by EFT for 1Q04, the determination includes  
22 penalties for late payment of the first prepayment for 1Q05, late payment of the second prepayment for  
23 1Q05, failure to pay the return for 1Q05 by electronic funds transfer, and finality penalties related to  
24

25  
26 <sup>1</sup> Since the 4Q04 return was filed late, the payment of the reported amount due was also late, and that payment was not  
27 made by EFT as required, there are actually three 10 percent penalties applicable; however, the total of these penalties is  
28 limited to 10 percent. (Rev. & Tax. Code, § 6479.3.) Thus, to avoid *any* penalty, petitioner must establish that none of  
these penalties should have been imposed, and failing that, must establish that all penalties should be relieved. Under the  
facts here, where the return and payment were mailed together, both the failure-to-file and the late payment penalties will  
be removed (if filed and paid timely), or both will remain (limited to 10 percent). With respect to the penalty for failure to  
pay by EFT, that remains applicable even if the return was filed timely.

1 the determinations for 1Q05 and the period May 20, 2005, through June 30, 2005. Petitioner has not  
2 provided an explanation for GSM's failures leading to these penalties. Accordingly, we find no basis  
3 to recommend relief of any of the penalties at issue.

4 **OTHER DEVELOPMENTS**

5 Petitioner has not disputed that he is personally liable for the unpaid tax liabilities of GSM  
6 pursuant to section 6829. However, in an email sent on December 9, 2011, petitioner states that, after  
7 June 21, 2005, he had no authority to write checks for the corporation. It appears that petitioner makes  
8 this assertion in support of his recent request for relief of all penalties, but it appears he is disputing the  
9 existence, as of June 21, 2005, of a condition necessary to support his personal liability under section  
10 6829. We note that, even if such had been the case, the only amount implicated by this assertion is the  
11 finality penalty of \$24.00 applicable to the determination for May 20, 2005, through June 30, 2005.

12 Petitioner has provided a copy of a stipulation in the Chapter 11 bankruptcy proceeding of  
13 GSM, which was filed June 27, 2005,<sup>2</sup> appointing Robert Frasier as the responsible person of GSM as  
14 of that date. However, that document also states that petitioner continued to serve as Director of GSM,  
15 with no indication that his responsibility for sales and use tax compliance was terminated. We  
16 contacted petitioner by telephone on December 19, 2011, at which time he advised that he has no  
17 additional evidence to present on this issue. Accordingly, we find there is insufficient evidence to  
18 conclude that petitioner is not liable pursuant to section 6829 for any portion of the liability period.

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20 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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28 <sup>2</sup> Petitioner referred to the date June 21, 2005, the date he signed the stipulation, while the date of entry of the document was June 27, 2005. This discrepancy is immaterial, since the \$24.00 penalty became due after either date.