

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Administrative Protest)
 4 Under the Sales and Use Tax Law of:)
 5 KENNETH KREISEL) Account Number: SR AC 53-003424
 6) Case ID 470151
 7 Taxpayer) La Canada Flintridge, Los Angeles County

8 Type of Liability Responsible person liability

9 Liability Period: 10/1/00 - 2/27/07

10 Item Amount

11 Responsible person liability \$23,836

	<u>Tax</u>	<u>Penalties</u>
12 As determined, protested	<u>\$18,041.47</u>	<u>\$5,794.67</u>
13 Tax	\$18,041.47	
14 Interest to 10/31/10	10,887.36	
15 Penalty for failure to file a return	346.50	
16 Finality penalty	1,334.91	
17 Late payment penalty	1,092.11	
Late filing of a return	830.27	
17 Amnesty interest penalty	1,247.47	
Amnesty double finality penalty	<u>943.41</u>	
18 Total tax, interest, and penalties	\$34,723.50	
19 Payments	<u>-264.04</u>	
Balance due	<u>\$34,459.46</u>	

20 Monthly interest beginning 11/1/10 \$103.70

21 Taxpayer did not respond to the Notice of Conference or appear at the appeals conference even
 22 though the notice of conference was mailed to his address of record and was not returned by the U.S.
 23 Postal Service as undeliverable. After the conference, which was held as scheduled, we sent taxpayer
 24 a letter informing him that the conference was held without his appearance and giving him the
 25 opportunity to submit any information or argument he wanted us to consider. Taxpayer did not
 26 respond. Accordingly, we issued our Decision and Recommendation based on the presentation by the
 27 Sales and Use Tax Department (Department) at the appeals conference and information contained in
 28 the petition and Board files.

UNRESOLVED ISSUES

Issue 1: Whether petitioner is personally liable as a responsible person under Revenue and Taxation Code section 6829 for the unpaid liabilities of Miller & Kreisel Sound, Inc., dba M&K Sound (M&K) (SR AC 18-640277) for the period October 1, 2000, through February 27, 2007.

We conclude that he is.

M&K, a corporation, manufactured and sold stereo systems and speakers in Chatsworth, California. M&K held a seller's permit effective October 1, 1974, through February 27, 2007, when it closed out its seller's permit and filed a bankruptcy petition. M&K's bankruptcy petition was discharged on June 10, 2008. At close out, M&K had outstanding liabilities based on: 1) a Notice of Determination (NOD) issued on July 8, 2005, for an audit liability for the period October 1, 2000, through December 31, 2003, which became final on August 7, 2005; 2) a penalty for the late filing of a self-assessed non-remittance return for the third quarter 2006 (3Q06) that was subsequently paid; 3) tax, interest, and penalty for late payment of a self-assessed non-remittance return for 4Q06; and 4) an NOD issued to M&K on September 26, 2007, for the period of January 1, 2007, to February 27, 2007, which became final on October 26, 2007.

After its investigation, the Department concluded that all four elements required to hold taxpayer personally liable for the tax debts of M&K under Revenue and Taxation Code section 6829 have been satisfied. Accordingly, on October 17, 2007, the Department issued an NOD to taxpayer for the unpaid liabilities of M&K (the finality penalty imposed on M&K on October 27, 2007, was not included in the NOD to issued to taxpayer because the finality penalty was imposed after that NOD was issued). Taxpayer did not timely pay the NOD or timely file a petition for redetermination. Thus, the NOD became final. Subsequently, taxpayer filed an untimely appeal, which the Department accepted as an administrative protest. However, taxpayer did not present any specific arguments in his appeal disputing his liability, nor did he appear at the appeals conference or respond to our post-conference letter to him.

Four conditions must be satisfied in order to impose liability on taxpayer pursuant to section 6829: the business of M&K must be terminated, M&K must have added or included sales tax reimbursement in the sale price of the tangible personal property sold, taxpayer must have been a

1 responsible person for purposes of section 6829, and taxpayer must have willfully failed to pay or to
2 cause to be paid M&K's tax liability. The record is clear that M&K's business has been terminated
3 and sales tax reimbursement was added or included in the sales price of tangible personal property.
4 With respect to responsibility, several documents identify taxpayer as president, CEO, and Chairman,
5 and he had 70.3 percent stock ownership of M&K. Additionally, taxpayer's involvement in M&K's
6 sales and use tax matters is evidenced by his signatures as chief executive officer on the exemption
7 certificates M&K issued to vendors for purchases of property to be used in teleproduction and
8 postproduction activities. We conclude that taxpayer was a responsible person within the meaning of
9 section 6829 for the period October 1, 2000, through February 27, 2007.

10 With respect to willfulness, a person is regarded as having willfully failed to pay taxes, or cause
11 them to be paid, where he or she had knowledge that the taxes were not being paid (or lacked
12 knowledge in reckless disregard of his or her duty to know) and had the authority to pay taxes or cause
13 them to be paid, but failed to do so. We find that taxpayer knew or should have known of the audit
14 liability at the time the NOD was issued, as well as the estimated liability assessed in the NOD for the
15 period January 1, 2007 through February 27, 2007, when M&K did not file its final return that was due
16 on April 30, 2007. Taxpayer also knew or should have known that sales tax returns were filed without
17 remittance for the 3Q06 and 4Q06 periods. Records indicate that M&K had total sales of \$262,502.58
18 for 1Q07, \$4,270,646.55 for 2006, and \$5,760,872.18 for 2005, thus, it had available funds with which
19 to pay its tax liability when M&K's returns for the period October 1, 2000, through February 27, 2007,
20 became due, and when the July 8, 2005 NOD became due on August 7, 2005, and instead used those
21 funds to pay other creditors and debts. Accordingly, we find that taxpayer willfully failed to pay or to
22 cause to be paid M&K's liabilities by choosing to pay M&K's other creditors rather than the tax debts
23 owed to the Board, and is thus personally liable for those tax debts under section 6829.

24 **Issue 2:** Whether taxpayer has established reasonable cause to relieve the penalties imposed on
25 M&K for the period October 1, 2000, through February 27, 2007. We conclude that there is no basis
26 for relief.

27 There is no statutory or regulatory authority for relieving these penalties in section 6829
28 determinations, but if petitioner could show that the penalties should be relieved as to the M&K under

1 Revenue and Taxation Code section 6592, the relief would also inure to petitioner's benefit. We
2 provided taxpayer with a form he could use to request relief from these penalties along with
3 instructions on how to complete the form, but taxpayer has not submitted a request for relief.
4 Accordingly, we have no basis to consider recommending relief of the penalties.

5 **OTHER DEVELOPMENTS**

6 The Department investigated Mr. Stephen Powers, who was president of M&K during the
7 liability period until July 1, 2006, for personal liability for M&K's tax liabilities, but did not
8 issue a responsible person determination against him because it did not locate any documents or other
9 evidence establishing that Mr. Powers willfully failed to pay or to cause to be paid any of the taxes at
10 issue. As explained in the D&R, it appears there would have been sufficient evidence to support the
11 issuance of an NOD to Mr. Powers. However, the Department has advised us that the Board found out
12 in May 2007 about a Chapter 7 bankruptcy filed by M&K and thus obtained knowledge of M&K's
13 termination in May 2007. Thus, since more than three years has passed since July 31, 2007 (the last
14 day of the month following the quarter during which the Board obtained knowledge of M&K's
15 termination), the applicable statute of limitations bars any determination issued for M&K's liability
16 pursuant to section 6829. (Rev. & Tax. Code, § 6829, subd. (f).)

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18 Summary prepared by Rey Obligacion, Retired Annuitant
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