STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination Of Successor Liability and Claim for Refund Under the Sales and Use Tax Law of:	
LR AUTO INC.	Account Number SR EA 101-042107 Case ID's 511001, 539222
Petitioner/Claimant	Santa Ana, Orange County

Type of Business: Used car dealer

Audit period: 01/01/02 – 09/30/04

Item	Disputed Amount
Successor liability	$85,113

Successor liability, as determined	$106,567.09
Post-D&R adjustment	- 7,866.46
Proposed redetermination	$98,700.63
Less payments by predecessor	- 13,588.00
Balance, protested	$85,112.63
Interest	$98,700.63
Payments	- 62,783.74
Balance Due	$35,916.89

UNRESOLVED ISSUE

Issue: Whether petitioner is liable as a successor to Rafael Eleasar Rodas, SR EA 97-634864. We find that petitioner is liable.

Rafael Eleasar Rodas operated Ralph's Auto Sales, a used car dealership. In May 2008, petitioner purchased all the automobiles and related financing documents from Mr. Rodas. After the date of sale, the Investigations and Special Operations Division (ISOD) issued a Notice of Determination against Mr. Rodas for tax, interest, and a fraud penalty, and Mr. Rodas was criminally prosecuted by the State. As part of a plea agreement, Mr. Rodas paid $376,268, the amount of tax determined. After that payment, the amount due on the determination to Mr. Rodas was $98,700.63 interest and a fraud penalty of $94,067.08. In addition, an amnesty interest penalty of $7,866.46 was added. ISOD concluded that petitioner was liable as a successor, and it issued a Notice of Successor Liability for $106,567.09 ($98,700.63 + $7,866.46). However, as recommended in the D&R, the

amnesty interest penalty has been deleted from the determinations issued to Mr. Rodas and to petitioner because Mr. Rodas was ineligible to participate in the amnesty program.

Petitioner contends in its petition for redetermination and in several claims for refund that it should not be held liable for the seller's unpaid liabilities because the Bill of Sale and Agreement states that seller is not subject to any liability not disclosed in the agreement; that seller has filed all federal, state, county, local, and all other tax returns and paid all taxes due; that petitioner would not assume any of seller's debts, taxes, obligations or liabilities; and that seller would indemnify buyer and hold it harmless for any and all claims, expenses, fees, demands or charges arising from any liabilities of the seller. Petitioner also asserts that it did not purchase seller's business, but instead purchased only the inventory. Petitioner opined at the appeals conference that it is unfair to hold it responsible for seller's liability because, although it was aware of the seller's liability to the state, it was not aware it was required to obtain a tax clearance.

There is no dispute that petitioner purchased seller's entire inventory of automobiles and related financing agreements. Petitioner's purchase of the seller's stock of goods is sufficient to trigger petitioner's withhold duty under Revenue and Taxation Code section 6011 in the absence of having obtained a receipt from the Board showing the seller's tax liability fully paid or a certificate from the Board showing that the seller had no tax liabilities. Since petitioner did not withhold from the purchase price to pay the seller's tax liabilities, we find petitioner is liable as a successor for seller's unpaid tax-related liabilities, to the extent of the purchase price of $150,000. (Rev. & Tax. Code, § 6812, subd. (a).) The Board was not a party to the agreement between the seller and petitioner, and any representations in the Bill of Sale and Agreement are irrelevant to petitioner's liability to the Board pursuant to the applicable statutory provisions. We recommend that the petition and the claims for refund be denied.

OTHER MATTERS

None.

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

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