

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Administrative Protest of)
 Successor Liability and Claim for Refund)
 Under the Sales and Use Tax Law of:) Account Number: SR AS 101-107671
 CHARLIE LEE, dba C J Gas Station) Case ID's 497366, 572712
 Taxpayer/Claimant) Los Angeles, Los Angeles County

Type of Business: Gasoline station
 Liability period: 07/01/05 – 06/30/08

<u>Item</u>	<u>Disputed Amount</u>
Successor liability	\$51,599.70
Successor liability as determined	\$52,670.79
Adjustment - Appeals Division	- 1,071.09
Adjusted successor liability	\$51,599.70
Payments	- 51,599.70
Balance Due	<u>\$ 00.00</u>

UNRESOLVED ISSUE

Issue: Whether taxpayer is liable as a successor for the unpaid tax liabilities of A's Royal Petroleum Corporation. We conclude that he is.

Taxpayer purchased a gasoline station and real estate from A's Royal Petroleum Corporation (ARPC) (SR AS 97-950748), and the Sales and Use Tax Department (Department) concluded taxpayer was liable as a successor to ARPC. The Department further concluded that the purchase price of the business, which represented the maximum amount of taxpayer's successor liability, was \$140,000, comprised of \$120,000 purchase price of the business and \$20,000 for the approximate value of inventory. Since ARPC's outstanding tax-related liabilities exceeded \$140,000, the Department issued a Notice of Successor Liability to taxpayer for \$52,670.79, the difference between \$140,000 and a payment of \$87,329.21 that the Board received from the escrow company. In the D&R, we recommend that the value of inventory be adjusted to \$18,928.91, based on an Inventory Valuation Detail report. Thus, we find that the purchase price of the business was \$138,928.91 (\$120,000 +

1 \$18,928.91) and recommend that the determination for successor liability be reduced to \$51,599.70
2 (\$138,928.91 - \$87,329.21).

3 Taxpayer acknowledges that he purchased the business from ARPC, but contends that he is not
4 liable as a successor. First, taxpayer asserts that he should not be held liable because he was orally
5 informed by a Board employee on July 1, 2008, that ARPC had no unpaid tax liabilities. Also,
6 taxpayer claims that, in light of ARPC's liabilities, the Department should not have issued taxpayer a
7 seller's permit. Further, taxpayer asserts that "escrow law" mandates that certain expenses take
8 priority over tax claims and that, after paying off all those higher-priority expenses, the escrow
9 company remitted the entire amount of the net proceeds from ARPC's sale of the business
10 (\$87,329.21) to the Board.

11 When a person liable for any amount under the Sales and Use Tax Law sells his business or
12 stock of goods, that person's successors or assigns must withhold sufficient of the purchase price to
13 cover those liabilities unless the former owner produces a receipt from the Board showing that all
14 liabilities have been paid or a certificate stating that no amount is due. Otherwise, the purchaser of the
15 business becomes personally liable for the payment of the predecessor's liability, up to the purchase
16 price. (Rev. & Tax. Code, §§ 6811, 6812.) Here, taxpayer did not obtain a tax clearance from the
17 Board or a receipt showing that all tax liability was paid, and failed to withhold sufficient of the
18 purchase price to cover ARPC's liabilities. Accordingly, taxpayer became personally liable for
19 ARPC's unpaid tax liabilities up to \$138,928.91, the purchase price of the business. Since the escrow
20 company remitted \$87,329.21 of the purchase price, taxpayer remained liable for \$51,599.70 (which he
21 has paid).

22 Taxpayer applied for a seller's permit on July 1, 2008, and the Board received a request for a
23 tax clearance a week later, on July 8, 2008. The Department responded to the request by issuing a
24 Notice of Amount Due and Conditional Release on July 17, 2008, which provided written notice to
25 taxpayer about the unpaid tax liabilities. Since the application for seller's permit was submitted before
26 the request for tax clearance, the latter request could not have affected the issuance of the seller's
27 permit, but in any event, there is no statute that grants the Board authority to deny a seller's permit
28 application on the basis that the predecessor has unpaid tax liabilities. Likewise, there is no authority

1 to support taxpayer's assertion that his liability has been satisfied by the partial payment from the
2 escrow company based on "escrow law." We find taxpayer is liable as a successor, and there is no
3 basis for relief of that liability.

4 Taxpayer has filed a claim for refund of \$22,500 paid against the determination during the
5 period March 7, 2011, through May 3, 2011. For the reasons explained above, we recommend that the
6 claim for refund be denied. We note that taxpayer has not filed a claim for refund for the remaining
7 payments of \$29,099.70, and the statute of limitations has expired with respect to payments totaling
8 \$7,500 made through June 14, 2011. By letter dated December 20, 2011, we advised taxpayer that he
9 may still file a claim for refund of payments totaling \$21,599.70, and that the statute of limitations for
10 doing so with respect to his payment of \$2,500 on June 28, 2011, will expire on December 28, 2011.

11 **OTHER DEVELOPMENTS**

12 None.

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