

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING SUMMARY**

In the Matter of the Administrative Protest )  
Under the Sales and Use Tax Law of: )  
DEANNA LEWIS ) Account Number SR AA 53-005139  
Taxpayer ) Case ID 510327  
Midway City, Orange County

Type of Liability: Responsible person liability

Liability period: 07/01/07 – 05/15/08

<u>Item</u>	<u>Disputed Amount</u>
Responsible person liability	\$48,206 <sup>1</sup>
Tax as determined	\$44,165.00
Interest through 04/30/13	17,359.12
Late payment penalties (returns)	4,113.10
Finality penalty	<u>303.40</u>
Total tax, interest, and penalty	\$65,940.62
Payments	<u>- 675.00<sup>2</sup></u>
Balance Due	<u>\$65,265.62</u>
Monthly interest beginning 05/01/13	<u>\$ 217.45</u>

This matter was scheduled for Board hearing in October 2012, but was deferred at the request of the Appeals Division in order to file a Supplemental D&R.

**UNRESOLVED ISSUE**

**Issue:** Whether taxpayer is personally liable as a responsible person for the unpaid liabilities of Gold Coast Associates, Inc. pursuant to Revenue and Taxation Code section 6829. We conclude taxpayer is personally liable.

Gold Coast Associates, Inc. (Gold Coast) (SR AA 22-789095) was a retailer of commercial tires. At the time its business terminated, Gold Coast had unpaid liabilities related to four sales and use

<sup>1</sup> The disputed amount is \$48,581.50 (tax and penalties) less \$375.00, which was paid by Betty Lewis.

<sup>2</sup> Taxpayer paid \$100 on August 20, 2009, and \$50 each on the 27<sup>th</sup> day of November 2012 and subsequent months. Taxpayer has not filed any claims for refund of the amounts paid, and the period for filing a timely claim for refund of the August 20, 2009 payment has passed. In order to be timely, a claim for refund of the payments made in 2012 and 2013 must be filed within six months from the date of payment. (Rev. & Tax. Code, § 6902, subd. (a)(1).)

1 tax returns filed with no remittance and one Notice of Determination. The Sales and Use Tax  
2 Department (Department) concluded that taxpayer was personally responsible for Gold Coast's sales  
3 and use tax compliance pursuant to section 6829.<sup>3</sup>

4 Taxpayer disputes only one of the four conditions for imposing personal liability pursuant to  
5 section 6829, that she willfully failed to pay or to cause to be paid taxes due from Gold Coast.  
6 Taxpayer concedes that Gold Coast's business was terminated on or about May 15, 2008, that Gold  
7 Coast collected sales tax reimbursement in connection with its retail sales, and that she was the  
8 president/chief executive officer of Gold Coast throughout the liability period and was responsible for  
9 Gold Coast's sales and use tax compliance. However, taxpayer asserts that, when Gold Coast ceased  
10 business operations, she handed over all of the responsibility for paying Gold Coast's creditors,  
11 including the Board, to her mother, Betty Lewis. Further, taxpayer stated at the appeals conference  
12 that, sometime in May 2008, she was removed as a signer from the corporate bank account. Also, Ms.  
13 Betty Lewis appeared at the conference and stated her belief that she is solely responsible for any  
14 amounts that remain due because her daughter instructed her regarding which creditors to pay after the  
15 business closed, and she disregarded those instructions. Thus, taxpayer disputes that she willfully  
16 failed to pay the taxes due from Gold Coast or to cause them to be paid.

17 We first note that taxpayer has not disputed the finding that all four conditions for holding her  
18 responsible pursuant to section 6829 have been satisfied for periods through May 15, 2008.  
19 Taxpayer's contention that her mother became responsible on May 15, 2008, has no bearing on any of  
20 the tax liability that accrued for quarters prior to May 15, 2008. Thus, regardless of the alleged  
21 delegation of responsibility to Betty Lewis in May 2008, taxpayer remains liable as a responsible  
22 person for the taxes that became due during the period July 1, 2007, through March 31, 2008. In other  
23 words, if taxpayer's alleged delegation of responsibility to Betty Lewis were effective to relieve  
24 taxpayer of liability, it would only relieve her of liability for the period April 1, 2008, through May 15,  
25 2008.

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27 <sup>3</sup> The Department also issued a Notice of Determination for personal liability pursuant to section 6829 to taxpayer's mother,  
28 Betty Lewis. Since she has not appealed that liability, the determination is now final.

1 Turning to the alleged delegation of responsibility, we note that personal liability can be  
2 imposed on a responsible person under section 6829 only if that person willfully failed to pay or to  
3 cause to be paid taxes due from the corporation, which means that the failure was the result of an  
4 intentional, conscious, and voluntary course of action (even if without a bad purpose or evil motive).  
5 A person is regarded as having willfully failed to pay taxes, or to cause them to be paid, where he or  
6 she had knowledge that the taxes were not being paid and had the authority to pay taxes or cause them  
7 to be paid, but failed to do so.

8 The first requirement for willfulness is knowledge. In this case, there is evidence of taxpayer's  
9 direct involvement in Gold Coast's sales and use tax matters in the second quarter of 2008 (2Q08) and  
10 thereafter. Specifically, taxpayer discussed Gold Coast's liability with the Department on various  
11 occasions through the end of January 2009. Moreover, in January 2009, taxpayer informed the  
12 Department that she had completed the returns for 1Q08 and 2Q08 and would mail them in, and she  
13 did submit the returns, albeit without any remittance. Consequently, we find that taxpayer knew Gold  
14 Coast owed tax for 2Q08 which was not paid.

15 Willfulness also requires that the responsible person must have been able to pay, or cause to be  
16 paid, the taxes when due. Taxpayer concedes she was president and chief executive officer of Gold  
17 Coast throughout the liability period, and she has not provided evidence that her role in the business  
18 changed prior to July 31, 2008, when the tax liability for 2Q08 became due. Indeed the foregoing  
19 evidence establishes taxpayer's direct involvement in Gold Coast's sales and use tax matters even after  
20 the alleged delegation of responsibility to Ms. Betty Lewis. Accordingly, we conclude taxpayer  
21 retained authority to pay Gold Coast's tax liability, despite any delegation of responsibility to her  
22 mother. Regarding whether Gold Coast had sufficient funds to pay the taxes due, we note that during  
23 the applicable periods, Gold Coast paid wages and utilities. In fact, the withdrawals from the bank  
24 account during the months of April through July 2008 totaled \$75,399.59. Thus, we find that funds  
25 were available to pay the sales tax liability, but taxpayer chose to pay other creditors instead. In  
26 summary, we conclude that all conditions have been satisfied for imposing personal liability on  
27 taxpayer under section 6829 for the outstanding tax liabilities of Gold Coast.

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**OTHER MATTERS**

The Notice of Determination issued to taxpayer includes penalties for late returns totaling \$4,113.10 and a finality penalty of \$303.40. Although we explained to taxpayer that she could request relief from those penalties on behalf of Gold Coast, and provided a form she could use, she has not done so. Consequently, we have no basis to consider recommending relief of the penalties.

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