

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination)
 Under the Sales and Use Tax Law of:)
 RANDOLPH HOPE BRUCE MURAD) Account Number SR FH 53-002977
 MICHELLE PAULINE MURAD) Case ID 404667
 Petitioners) Account Number SR FH 53-002978
) Case ID 404668
) San Diego, San Diego County

Type of Liability: Responsible person liability
 Liability period: 10/01/99 – 12/31/05

<u>Item</u>	<u>Disputed Amount</u>
Responsible person liability	\$37,803
As determined	\$47,225.62
Post-D&R adjustment	<u>- 9,422.16</u>
Proposed redetermination, protested	<u>\$37,803.46</u>
Interest ¹	\$25,961.60
Finality penalty	<u>11,841.86</u>
Total interest and penalty	<u>\$37,803.46</u>

UNRESOLVED ISSUES

Issue 1: Whether petitioners are personally liable as responsible persons for the unpaid liabilities of Murad Enterprises, Inc. pursuant to Revenue and Taxation Code section 6829. We find petitioners are personally liable.

Murad Enterprises, Inc. (Murad) (SR FH 97-292224) made retail sales of flooring materials and operated as a construction contractor from September 1998 through the end of 2005. Petitioners were corporate officers of Murad (Mr. Murad was the corporate president, chief executive officer, and treasurer, and Mrs. Murad was the corporate secretary). When Murad ceased business operations, it had unpaid interest and penalty related to sales and use tax liabilities, which had been determined against Murad in two separate Notices of Determination. As noted under “Resolved Issue,” the Sales

¹ The liability includes no tax, since all tax was paid by the corporation.

1 and Use Tax Department (Department) subsequently concluded that the amount determined against
2 Murad for the fourth quarter 2005 (4Q05) should not be included in the determinations against
3 petitioners as individuals. Accordingly, the only amounts remaining in dispute are the interest and
4 finality penalty originally imposed against Murad with respect to the determination issued pursuant to
5 an audit of the period October 1, 1999, through March 31, 2003.

6 Of the four conditions necessary for imposing personal liability pursuant to section 6829,
7 petitioners protest only the finding that their failure to pay Murad's sales and use tax liabilities was
8 willful, the first requirement for which is knowledge. Both petitioners have conceded that they were
9 directly involved in ensuring Murad's sales and use tax compliance. Also, Mrs. Murad has specifically
10 conceded that she had knowledge of Murad's unpaid tax liabilities. Consequently, we find that
11 petitioners knew of the unpaid interest and penalty.

12 Willfulness also requires that the responsible person must have been able to pay, or cause to be
13 paid, the taxes when due. There is no dispute that both petitioners had authority to pay the liability or
14 to cause it to be paid. Regarding whether Murad had sufficient funds to pay the taxes due, we note that
15 the corporation remained in business throughout the liability period. Further, during the applicable
16 periods, Murad paid wages and made payments to its landlord and to its major supplier of carpet.
17 Accordingly, we find that funds were available to pay the liability due to the Board, but petitioners
18 chose to pay other creditors instead. Thus, we find that petitioners' failure to pay the tax-related
19 liability or to cause it to be paid was willful, and that petitioners are liable as individuals pursuant to
20 section 6829 for the outstanding liabilities of Murad.

21 **Issue 2:** Whether adjustments are warranted to the understatement determined against Murad
22 for the period October 1, 1999, through March 31, 2003. We find no adjustment is warranted.

23 The Department conducted an audit of Murad for the period October 1, 1999, through
24 March 31, 2003. In addition to arguing that they should not be held personally liable for the amounts
25 determined against Murad, petitioners argue that adjustments should be made to the audited
26 understatement for materials consumed on lump sum construction contracts for the U. S. Government,
27 for bad debts, for nontaxable sales for resale, and for exempt sales in interstate commerce.

