

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:) Account Number SR GHC 53-005050
 5 KHANH CAT PHAM) Case ID 495973
 6 Petitioner) San Jose, Santa Clara County

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 8 Type of Liability: Responsible person liability

9 Liability period: 10/1/06 – 03/23/07

10 Item Disputed Amount

11 Responsible person liability \$9,568

	<u>Tax</u>	<u>Penalty</u>
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13 As determined	\$14,230.46	\$1,950.65
14 Post-D&R adjustment	<u>- 5,276.00</u>	<u>- 1,337.30</u>
14 Proposed redetermination, protested	<u>\$ 8,954.46</u>	<u>\$ 613.35</u>
15 Proposed tax redetermination	\$ 8,954.46	
16 Interest through 09/3/012	4,138.59	
16 Late payment penalty	<u>613.35</u>	
17 Total tax, interest, and penalty	<u>\$13,706.40</u>	
18 Monthly interest beginning 10/01/12	<u>\$ 44.77</u>	

19 This matter was scheduled for Board hearing in May 2012, but was postponed for settlement
 20 consideration.

21 **UNRESOLVED ISSUES**

22 **Issue 1:** Whether petitioner is personally liable as a responsible person for the unpaid liabilities
 23 of Home Furniture Gallery, Inc. pursuant to Revenue and Taxation Code section 6829. We conclude
 24 petitioner is personally liable for amounts that became due during the period October 1, 2006, through
 25 March 21, 2007.

26 Home Furniture Gallery, Inc. (Home Furniture) (SR GHC 100-490521) operated as a furniture
 27 retailer from January 1, 2005, through March 23, 2007. At the time its business terminated, Home
 28 Furniture had unpaid liabilities related to a return filed with partial remittance, a prepayment for which

1 the payment had been returned by the bank for non-sufficient funds, and a Notice of Determination
2 issued because it failed to file a return. The Sales and Use Tax Department (Department) concluded
3 that petitioner was a responsible person under section 6829 and issued a Notice of Determination to
4 petitioner for all the unpaid liabilities of Home Furniture.¹ It subsequently concluded that petitioner
5 was responsible only for amounts due through March 21, 2007, as explained under “Resolved Issue.”

6 Based on the available records, the Department concluded that petitioner was the corporate
7 secretary for Home Furniture. Also, petitioner signed various business documents and checks, and he
8 communicated with the Department regarding Home Furniture’s tax liabilities on at least four
9 occasions. The Department also determined that petitioner willfully failed to pay or to cause to be paid
10 Home Furniture’s tax liabilities because Home Furniture had funds available at the time the taxes
11 became due and chose to pay other creditors.

12 Petitioner disputes two of the four conditions for imposing personal liability pursuant to section
13 6829, that he was a responsible person and that he willfully failed to pay or to cause to be paid taxes
14 due from Home Furniture. Petitioner asserts that he was not a responsible person, but that he was
15 merely an investor in the business. Further, petitioner claims that, if any payments needed to be made,
16 he was required to obtain authorization from the corporate president, Phuong Anh La. In addition,
17 petitioner states that he attempted to convince Mr. La to pay all of Home Furniture’s outstanding debts,
18 including the sales and use tax liabilities, but Mr. La refused.

19 Petitioner communicated with Board staff regarding Home Furniture’s sales and use tax
20 liabilities, which is consistent with his being a responsible person for Home Furniture’s sales and use
21 tax compliance. Petitioner also signed Home Furniture’s sales and use tax return for the fourth quarter
22 2006, which is strong evidence that he had a responsibility and duty to act for the corporation in sales
23 and use tax matters. In addition, petitioner signed Home Furniture checks as the sole signatory,
24 without any co-signer. Therefore, we reject petitioner’s assertion that he was merely an
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27 ¹ The Department also issued a determination under section 6829 to Phuong Anh La, the corporate president. Mr. La did
28 not file an appeal, and that determination is now final. Although the Department investigated Xuan Loan Ho, the chief
financial officer, it concluded that she was not involved with sales and use tax matters for Home Furniture during the
relevant period.

1 investor in the business, and we find that he was a responsible person as defined by section 6829.

2 With respect to willfulness, a responsible person is regarded as having willfully failed to pay
3 taxes, or to cause them to be paid, where he or she had knowledge that the taxes were not being paid
4 and had the authority and ability to pay the taxes or to cause them to be paid, but failed to do so. It is
5 clear that, when petitioner signed the fourth quarter 2006 return and filed it with a partial remittance,
6 he knew of the taxes reported on that return for which payment was not made, and petitioner conceded
7 at the conference that he knew the January 2007 prepayment was due but not paid. Consequently, we
8 find that taxpayer knew of the unpaid liabilities.

9 Regarding petitioner's authority to pay the taxes due, it is undisputed that petitioner had
10 authority to sign corporate checks without a co-signor, and we find that petitioner has not established
11 that he lacked authority to pay the taxes he knew to be due. Since Home Furniture made lease
12 payments and made payments to at least two suppliers during the applicable periods, and presumably
13 paid other necessary operating expenses for its operations through March 21, 2007, we find that funds
14 were available for petitioner to pay or to cause to be paid the sales tax liability, but other creditors were
15 paid instead. In summary, we conclude that all conditions have been satisfied for imposing personal
16 liability on petitioner under section 6829 for the Home Furniture's unpaid tax liabilities for the fourth
17 quarter 2006 and for the January 2007 prepayment.

18 **Issue 2:** Whether taxpayer has established reasonable cause sufficient for relieving the late-
19 payment penalty for the taxes due for the fourth quarter 2006. We conclude that he has not.

20 Petitioner submitted a request for relief signed under penalty of perjury requesting relief on the
21 basis that he did not have authority to act on behalf of the company without Mr. La's approval and that
22 he was merely an investor caught in a bad investment. Those grounds do not address why *Home*
23 *Furniture* failed to timely pay the taxes at issue but instead reiterate petitioner's contention that he
24 should not be held personally liable. Since petitioner has not established reasonable cause for Home
25 Furniture's late payment of the amount due for the fourth quarter 2006, and recommend that relief be
26 denied.

27 **RESOLVED ISSUE**

28 The determination issued to petitioner included a tax liability of \$5,276.00 for the first quarter

1 2007, a late prepayment penalty of \$282.10 for the January 2007 prepayment, and a failure-to-file
2 penalty of \$527.60 and a finality penalty of \$527.60 for the first quarter 2007. However, in a post-
3 conference memorandum, the Department stated that, based on its investigation of Home Furniture's
4 bank records, it concluded that petitioner was removed as a signatory from the corporate bank account
5 as of March 21, 2007. Accordingly, we find that petitioner is not liable for any amounts that became
6 due after that date, including the tax and penalties for the first quarter 2007 return (excluding that
7 amounts that should have been prepaid in January 2007). We conclude that the penalty for failing to
8 make the January 2007 prepayment was not made certain until the first quarter 2007 return was due,
9 after petitioner was no longer responsible for Home Furniture's sales tax compliance. We therefore
10 find that petitioner is not liable for the penalty for failure to make the prepayment. Accordingly, we
11 conclude that the tax and penalty for which petitioner is liable should be reduced by \$5,276.00 tax and
12 \$1,337.30 ($\$282.10 + \$527.60 + \527.60), respectively.

13 **OTHER MATTERS**

14 None.

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