

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:)
VLADIMIR RODZAI, dba The Terrace) Account Number: SR AS 53-002989
Petitioner) Case ID 461627
Venice, Los Angeles County

Type of Business: Restaurant with bar

Liability period: 01/04/99 – 06/10/04

<u>Item</u>	<u>Disputed Amount</u>		
Suspended corporation liability	\$573,652		
		<u>Tax</u>	<u>Penalty</u>
As determined		\$906,276.12	\$390,253.94
Adjustment - Appeals Division		- 410,587.86	- 176,774.28
		<u>- 90,398.07</u>	<u>- 45,118.14</u>
Proposed redetermination, protested		<u>\$405,290.19</u>	<u>\$168,361.52</u>
Proposed tax redetermination		\$ 405,290.19	
Interest through 02/29/12		349,085.70	
Fraud penalty		101,322.65	
Amnesty double fraud penalty		<u>67,038.87</u>	
Total tax, interest, and penalty		<u>\$922,737.41</u>	
Monthly interest beginning 03/01/12		<u>\$ 2,364.19</u>	

This matter was scheduled for Board hearing in October 2011, but was postponed at petitioner's request to allow additional time to prepare for hearing.

UNRESOLVED ISSUE

Issue: Whether petitioner is personally liable as a responsible person for the unpaid liabilities incurred by Frangi's Restaurant Inc., while the corporation was suspended. We find that he is.

Petitioner is the president of Frangi's Restaurant Inc. (SR AS 99-747878) (Frangi's), which operates a restaurant. The Sales and Use Tax Department (Department) conducted an audit of Frangi's and established an understatement for the period January 1, 1998, through September 30, 2006. The Notice of Determination issued to Frangi's was based on an understatement of reported taxable sales of

1 \$17,290,156, and the D&R recommended adjustments which reduced the amount of understatement to
2 \$10,453,263. In preparation for the previously-scheduled Board hearing, the Department
3 recommended further adjustments, with which we concur, that further reduced the amount of
4 understatement for the corporation to \$9,320,695. The Department found that the corporation was
5 suspended during the period January 4, 1999, through June 10, 2004, although the restaurant continued
6 to operate and make sales. The Department concluded that petitioner was making sales during that
7 period of suspension, and it issued the determination in dispute here. The determination has been
8 adjusted in accordance with the adjustments made to the determination issued to Frangi's.¹ The
9 determination has also been adjusted to exclude the amount of sales for June 10, 2004, based on the
10 Department's recent discovery that the corporation was revived by the Secretary of State on that date.

11 In a letter dated January 5, 1999, the Secretary of State notified Frangi's that the corporation's
12 powers, rights and privileges were suspended because of its failure to file a statement of officers. The
13 letter informed petitioner that the corporation would remain suspended until the Franchise Tax Board
14 (FTB) issued a Certificate of Revivor. According to petitioner and FTB, petitioner contacted FTB on
15 May 7, 2004, to inquire about the certificate, and was informed that a certificate was no longer
16 required for the Secretary of State to reinstate the corporation. Petitioner contacted the Secretary of
17 State and the suspension was lifted effective June 10, 2004.

18 Petitioner asserts that Frangi's mailed a completed application for a Certificate of Revivor in
19 April 1999 and contends that the corporate status of Frangi's should have been reinstated in April
20 1999. Thus, he contends that he should not be held personally liable for any period after April 1999.
21 Although petitioner provided a copy of a letter to FTB dated April 16, 1999, he did not provide a copy
22 of the certificate or a copy of FTB's reply. FTB informed us that it had sent a letter to petitioner in
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25 ¹ The determination was issued on July 22, 2008, which is more than eight years after the due date of the returns for the
26 period January 4, 1999, through March 31, 2000. Accordingly, the determination is timely for that portion of the liability
27 period only if the finding of fraud in the related case of Frangi's is upheld (which finding is assignable to petitioner if, in
28 turn, the finding is upheld that he is responsible for the liability of Frangi's for having operated the business during the
period of its corporate suspension). The determination is timely for the period April 1, 2000, through June 10, 2004,
because petitioner did not file returns in his own name for that period and the returns for those periods were due less than
eight years before the determination was issued. (Rev. & Tax. Code, § 6487, subd. (a).)

1 1999 advising him of the requirements necessary to reinstate the corporation, but it could not provide a
2 copy of the letter since it had purged its files.

3 A corporate officer or shareholder with control over operations or management of a closely
4 held corporation who fails to pay or to cause to be paid any taxes due from a closely held corporation,
5 during a time in which the corporation's powers, rights, and privileges are suspended, is personally
6 liable under specified circumstances for any unpaid sales or use tax liability of that suspended
7 corporation during the period of suspension. (Cal. Code Regs., tit. 18, § 1702.6, subd. (a).) Here, it is
8 undisputed that each of the elements necessary to impose personal liability on petitioner have been
9 satisfied. Since there is no authority for allowing relief from responsible person liability based on an
10 alleged error by FTB, we conclude that the determination to petitioner should be upheld.

11 **OTHER DEVELOPMENTS**

12 None.

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