

## 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: )

5 VLADIMIR RODZAI, dba The Terrace )

6 Petitioner )

Account Number: SR AS 53-002989

Case ID 461627

Venice, Los Angeles County

7  
8 Type of Business: Restaurant with bar

9 Liability period: 01/04/99 – 06/10/04

10 Item Disputed Amount

11 Suspended corporation liability \$573,652

TaxPenalty

12 As determined

\$906,276.12

\$390,253.94

13 Adjustment - Appeals Division

- 410,587.86

- 176,774.28

14 Proposed redetermination, protested

- 90,398.07- 45,118.14\$405,290.19\$168,361.52

15 Proposed tax redetermination

\$ 405,290.19

16 Interest through 10/31/11

340,304.42

17 Fraud penalty

101,322.65

17 Amnesty double fraud penalty

67,038.87

18 Total tax, interest, and penalty

\$913,956.13

19 Monthly interest beginning 11/01/11

\$ 2,026.45

## 20 UNRESOLVED ISSUE

21 **Issue:** Whether petitioner is personally liable as a responsible person for the unpaid liabilities  
22 incurred by Frangi's Restaurant Inc., while the corporation was suspended. We find that he is.23 Petitioner is the president of Frangi's Restaurant Inc. (SR AS 99-747878) (Frangi's), which  
24 operates a restaurant. The Sales and Use Tax Department (Department) conducted an audit of Frangi's  
25 and established an understatement for the period January 1, 1998, through September 30, 2006. The  
26 Notice of Determination issued to Frangi's was based on an understatement of reported taxable sales of  
27 \$17,290,156, and the D&R recommended adjustments which reduced the amount of understatement to  
28 \$10,453,263. The Department found that the corporation was suspended during the period January 4,

1 1999, through June 10, 2004, although the restaurant continued to operate and make sales. The  
2 Department concluded that petitioner was making sales during that period of suspension, and it issued  
3 the determination in dispute here, which has been adjusted in accordance with the adjustments made to  
4 the determination issued to Frangi's.<sup>1</sup>

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

12 Petitioner asserts that Frangi's mailed a completed application for a Certificate of Revivor in  
13 April 1999 and contends that the corporate status of Frangi's should have been reinstated in April  
14 1999. Thus, he contends that he should not be held personally liable for any period after April 1999.  
15 Although petitioner provided a copy of a letter to FTB dated April 16, 1999, he did not provide a copy  
16 of the certificate or a copy of FTB's reply. FTB informed us that it had sent a letter to petitioner in  
17 1999 advising him of the requirements necessary to reinstate the corporation, but it could not provide a  
18 copy of the letter since it had purged its files.

19 A corporate officer or shareholder with control over operations or management of a closely held  
20 corporation, or any person who fails to pay or to cause to be paid any taxes due from a closely held  
21 corporation, during a time in which the corporation's powers, rights, and privileges are suspended, is  
22 personally liable under specified circumstances for any unpaid sales or use tax liability of that  
23 suspended corporation during the period of suspension. (Cal. Code Regs., tit. 18, § 1702.6, subd. (a).)

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25  
26 <sup>1</sup> The determination was issued on July 22, 2008, which is more than eight years after the due date of the returns for the  
27 period January 4, 1999, through March 31, 2000. Accordingly, the determination is timely for that portion of the liability  
28 period only if the finding of fraud in the related case of Frangi's is upheld (which finding is assignable to petitioner if, in  
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 Here it is undisputed that: (1) Frangi's collected sales tax reimbursement from customers and failed to  
2 pay some of the corresponding tax to the Board; (2) petitioner was a person responsible for managing  
3 the financial affairs of Frangi's; (3) Frangi's is a closely-held corporation; and (4) Frangi's corporate  
4 status was suspended on January 4, 1999. In other words, petitioner has conceded each of the elements  
5 necessary to assess personal liability. (Cal. Code Regs., tit. 18, § 1702.6.) There is no authority for  
6 allowing relief from responsible person liability based on an alleged error by FTB. Accordingly, we  
7 conclude that the determination to petitioner should be upheld.

8 **OTHER DEVELOPMENTS**

9 In preparation for the Board hearing, the Department noted that the assessment to petitioner  
10 included liability for June 10, 2004, the date on which the corporation was revived by the Secretary of  
11 State. Since petitioner is not liable for suspended corporation liability except for periods the  
12 corporation is actually suspended, the Department recommends that the liability imposed on Frangi's  
13 for June 10, 2004, be removed from petitioner's liability. Additionally, the Department reexamined its  
14 computations on which the recommendation in the Frangi's D&R was based, and now recommends an  
15 additional adjustment. The Department recommends a corresponding adjustment to the liability  
16 against petitioner as an individual for the period the corporation was suspended. These adjustments  
17 reduce the amount of suspended corporation liability by \$135,516, from \$709,168 to \$573,652.

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