

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matters of the Administrative Protest of)
 4 Successor Liability and Claim for Refund)
 4 Under the Sales and Use Tax Law of:)
 5) Account Number SR AS 101-124058
 6 SONG CHA SANCHEZ, dba Soy Bean) Case ID's 535612,570144
 7 Taxpayer/Claimant) Los Angeles, Los Angeles County

8 Type of Business: Restaurant

9 Liability period: 07/01/05 – 07/31/08

10 Item Disputed Amount

11 Successor liability/claimed refund \$2,893
 12 Collection cost recovery fee \$ 925

	<u>Tax</u>	<u>Penalty</u>
13 As determined and proposed to be redetermined	\$54,529.15	\$7,152.92
14 Less payments by other parties	<u>- 51,636.22</u>	<u>-7,152.92</u>
15 Balance, protested	<u>\$ 2,892.93</u>	<u>\$ 00.00</u>
16 Proposed tax redetermination	\$54,529.15	
17 Interest	8,074.62	
17 Negligence penalty	6,901.22	
17 Late payment penalty	<u>251.70</u>	
18 Total tax, interest, and penalty	\$69,756.69	
18 Payments	<u>- 69,756.69</u>	
19 Balance Due	<u>\$ 00.00</u>	

20 UNRESOLVED ISSUES

21 **Issue 1:** Whether taxpayer is liable as a successor for the unpaid tax liabilities of Soy Bean
 22 Chinese Restaurant, Inc. We conclude that taxpayer is liable and that a refund of the amount paid
 23 against the Notice of Successor Liability (NOSL) is not warranted.

24 Soy Bean Chinese Restaurant, Inc. (SBCR) (SR AS 100-620166) operated a restaurant, which
 25 it sold to taxpayer in May 2008. Escrow instructions signed on May 2, 2008, provided that prior to the
 26 final disbursement of funds, SBCR would furnish to taxpayer a tax clearance certificate from the
 27 Board, through escrow. On August 1, 2008, taxpayer began operating the business. Prior to dispersing
 28 the proceeds from the sale of the business to the seller, the escrow company submitted a written

1 request for a tax clearance certificate to the Board on behalf of taxpayer. On September 29, 2008, the
2 Sales and Use Tax Department (Department) mailed to taxpayer, to the seller, and to the escrow
3 company, a notice that the entire purchase price of \$170,000 needed to be paid to the Board as a
4 condition of the Department's issuing a tax clearance certificate. On April 2, 2009, the Department
5 sent a revised notice, reducing the amount needed before a tax clearance certificate would be issued to
6 \$91,567.60. Taxpayer ultimately withheld \$17,000 of the purchase price from the seller through
7 escrow, which was remitted to the Board and applied toward SBCR's liability. Since that amount was
8 insufficient to satisfy SBCR's liability, the Department did not issue a tax clearance certificate. The
9 Department determined that taxpayer was liable as a successor for SBCR's unpaid tax obligations and
10 it issued the NOSL in dispute. Since the NOSL was issued, the Department has collected \$2,892.93
11 from taxpayer by levy, and taxpayer has filed timely claims for refund of all payments collected by
12 levy. Another party to whom a dual determination was issued has paid the remainder of the liability,
13 reducing taxpayer's derivative liability as a successor to zero. Accordingly, the only amount that
14 remains in dispute here is the \$2,892.93 paid and the claim for refund for that amount.

15 Taxpayer contends it is unfair to hold her liable for any liabilities incurred by SBCR. Also, she
16 asserts the escrow company assured her it was okay to go ahead with the sale. Taxpayer states she
17 would never have purchased the business if she had known SBCR owed money to the state. Further,
18 taxpayer requests relief of the successor liability on the basis that she never received the NOSL.

19 Addressing the last argument first, the NOSL was timely issued on January 5, 2010, within
20 three years of the date the Board received notice of the sale of the business on August 4, 2008. (See
21 Rev. & Tax. Code, § 1702, subd. (d)(1).) The Department mailed the NOSL to taxpayer's then-current
22 mailing address as reflected on the Board's records, and there is no indication that the NOSL was
23 returned by the Post Office as undeliverable. To the contrary, taxpayer concedes that she received the
24 February 19, 2010, demand for immediate payment, which the Department mailed to the same address.
25 Thus, we find that the NOSL was timely and validly issued to taxpayer, and there is no basis to
26 consider relief based on taxpayer's assertion that she did not receive the NOSL. Regarding taxpayer's
27 claim that it is unfair to hold her liable for tax obligations incurred by SBCR, we find that taxpayer had
28 an obligation to withhold sufficient of the purchase price to cover the tax liability of the seller.

1 Further, although taxpayer claims she was unaware of the unpaid tax liability of the seller, the
2 Department notified taxpayer of the amounts due on September 29, 2008, in a notice issued in response
3 to taxpayer's August 1, 2008 request for a tax clearance certificate. Thus, although the Department
4 timely responded to taxpayer's request for a tax clearance certificate, taxpayer failed to pay the amount
5 required to obtain a tax clearance certificate. Accordingly, we find taxpayer is liable as a successor for
6 the tax obligations incurred by SBCR (Rev. & Tax. Code §§ 6811, 6812, subd. (a); Cal. Code Regs.,
7 tit. 18, § 1702, subds. (a), (b), (c).) Since the amount paid by taxpayer does not exceed the amount
8 due, we recommend that the claim for refund of \$2,892.93 be denied.

9 **Issue 2:** Whether relief of the collection cost recovery fee is warranted. We find that relief is
10 not warranted.

11 On January 31, 2011, the Department issued a demand notice to taxpayer, advising her that
12 continued failure to pay the amount due could result in collection action, including the imposition of a
13 collection cost recovery fee. On May 16, 2011, a \$925 collection cost recovery fee was imposed
14 because taxpayer did not pay the liability in full or enter into an installment payment agreement.
15 Taxpayer has requested relief of the collection cost recovery fee on the basis that SBCR should be
16 responsible for all amounts due and that she did not receive a copy of the NOSL and did not become
17 aware of the liability until February 2010.

18 We have previously concluded that the NOSL was timely and validly issued. Further, the
19 collection cost recovery fee is not a liability of SBCR that was included in the NOSL. Instead, the fee
20 was imposed for taxpayer's failure to pay the liability in response to the January 31, 2011 demand
21 notice. With respect to taxpayer's assertion that it is unfair to hold her liable because other more
22 culpable persons should pay the liability, we have concluded that taxpayer is liable as a successor. She
23 incurred collection costs in relation to that successor liability, and she has not shown that her failure to
24 pay the successor liability was due to reasonable cause and circumstances beyond her control.
25 Accordingly, we find that relief of the collection cost recovery fee is not warranted.

26 **OTHER MATTERS**

27 None.

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