

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Request for Administrative)
 4 Hearing on the Jeopardy Determination Under the)
 Sales and Use Tax Law of:)
 5) Account Number: SR AC 53-003279
 6 ALI SHAHRYARINEJAD) Case ID 418258
)
 7 Applicant) Woodland Hills, Los Angeles County

8 Type of Liability: Responsible person liability

9 Liability Period: 4/1/06 – 6/30/07

10 Item Amount

11 Responsible Person Liability \$704,218

	<u>Tax</u>	<u>Penalty</u>
12 As determined, protested	<u>\$630,014.30</u>	<u>\$74,203.60</u>
13 Proposed tax redetermination	\$630,014.30	
14 Interest to 10/31/10	218,607.89	
15 Late payment penalties	46,100.20	
Penalties for failure to file returns	<u>28,103.40</u>	
16 Total tax, interest, and penalty	<u>\$922,825.79</u>	
17 Monthly interest beginning 11/01/10	<u>\$3,675.08</u>	

18 UNRESOLVED ISSUES

19 **Issue 1:** Whether applicant's partners or joint venturers are also personally liable as
 20 responsible persons for the unpaid liabilities of Bank Repo Auto, Inc. (Bank Repo Auto) (SR AC 100-
 21 537433), for the period April 1, 2006, through June 30, 2007. We conclude they are not.

22 Bank Repo Auto operated a used car dealership from January 1, 2005, through June 30, 2007,
 23 when its seller's permit was closed out. At close-out, Bank Repo Auto had outstanding liabilities from
 24 filing returns and prepayment forms without payment for the periods April 1, 2006, through
 25 December 31, 2006, filing late prepayments for January and February, 2007, and failure to file returns
 26 for the period January 1, 2007, through June 30, 2007. The Department conducted an investigation
 27 and determined that applicant was a responsible person for purposes of Revenue and Taxation Code
 28 section 6829. Accordingly, on August 16, 2007, the Sales and Use Tax Department (Department)

1 issued a Jeopardy Notice of Determination to applicant for Bank Repo Auto's outstanding liabilities.¹
2 Applicant filed a timely request for an administrative hearing, and at the appeals conference he
3 conceded that he is a responsible person. However, he contends that his partners in a joint venture,
4 Necessary Holdings, Inc. (Necessary Holdings) and WWAS Holdings, Pty, LTD (WWAS Holdings),
5 were also responsible persons who should be held liable for Bank Repo Auto's unpaid tax liabilities.

6 Applicant states that he entered into a joint venture agreement with Necessary Holdings, Inc.
7 (Necessary Holdings) and Mr. Massoud Moghimi² on August 1, 2004, to acquire and sell used
8 automobiles under a Department of Motor Vehicles (DMV) dealer license held in Mr. Moghimi's
9 name. The agreement provided that Necessary Holdings would make a cash contribution, while
10 applicant and Mr. Moghimi would provide their services; net profits or losses would be allocated
11 50 percent to Necessary Holdings and 50 percent to applicant and Mr. Moghimi; applicant and
12 Mr. Moghimi would keep the books and accounting records for the business (with the books being
13 available for inspection by Necessary Holdings); and both applicant and Mr. Moghimi would have the
14 power, authority, and control over the purchase, reconditioning, and sale of all vehicles acquired for
15 the venture.

16 Subsequently, Necessary Holdings' interest was assigned to WWAS Holdings, Pty, LTD
17 (WWAS Holdings) on August 29, 2005, as part of a settlement of a dispute between the two entities.
18 Applicant, Mr. Moghimi, and WWAS Holdings then entered into a joint venture for which the joint
19 venture agreement incorporated the provisions of the former joint venture, with revisions to replace the
20 references to Necessary Holdings with WWAS Holdings, and revisions to the distributions. On May 1,
21 2006, applicant, Mr. Moghimi, and Necessary Holdings entered into a new joint venture agreement
22 which incorporated all the terms from the former joint venture agreement. Based on these joint
23 venture agreements, applicant claims that Necessary Holdings and WWAS Holdings should be
24 considered his partners in the business and that, pursuant to Corporations Code section 16306, since all
25 _____

26 ¹ The Department issue a jeopardy determination to applicant because, based on the Department of Motor Vehicle's
27 investigation, the Los Angeles District Attorney was ready to file at least 10 counts against applicant for identity theft,
28 grand theft, and embezzlement, applicant was transferring corporate funds to his wife, whom he allegedly is divorcing, and
applicant was the sole owner of a commercial property that was foreclosed and sold to a new owner on June 29, 2007.

² The Department concluded that there was insufficient evidence to find Mr. Moghimi personally liable under section 6829
because he did not have a role in sales and use tax matters.

1 partners are liable jointly and severally for all obligations of the partnership, both Necessary Holdings
2 and WWAS Holdings should also be held responsible for the unpaid liabilities of Bank Repo Auto.

3 Since the liabilities in issue were incurred by a corporation and not by a partnership,
4 Corporations Code section 16306 does not apply. Additionally, applicant is being held liable for the
5 unpaid liabilities of Bank Repo Auto because he was a responsible person pursuant to section 6829,
6 not because he was a “partner” or a participant in the joint venture. We also find that, based on the
7 records, Necessary Holdings and WWAS holdings were merely investors in Bank Repo Auto and were
8 not involved with Bank Repo Auto’s compliance with the Sales and Use Tax Law. Thus, based on the
9 available evidence, we conclude Necessary Holdings and WWAS Holdings were not responsible
10 persons for purposes of section 6829 and thus not liable for the unpaid liabilities incurred by Bank
11 Repo under section 6829.

12 Furthermore, even if we found that Necessary Holdings and WWAS Holdings were responsible
13 persons under section 6829, (which we have not), more than one person may be held liable for the
14 same primary liability, so long as the requirements for imposing such liability on each person are
15 satisfied. Of course, the liability will be collected only once, regardless of how many persons are
16 found to be liable. Applicant does not dispute, and the evidence clearly establishes, that applicant had
17 responsibility for Bank Repo Auto’s compliance with the Sales And Use Tax Law, but willfully failed
18 to pay or to cause to be paid the taxes when due. Thus, we find that applicant is a responsible person
19 for purposes of section 6829 and is personally liable for the unpaid Bank Repo Auto liabilities at issue.

20 **Issue 2:** Whether adjustments should be made to reduce the amount of applicant’s responsible
21 person liability. We conclude that no adjustments are warranted.

22 In his request for administrative hearing, applicant contends that the liability was excessive
23 because payments made by Bank Repo Auto totaling \$855,695.72 have not been applied to its
24 liabilities for the period at issue. For support, applicant provided a list of payments made, dates of
25 payment, the reporting periods for which the payments were made, the cashiers’ check numbers or
26 Bank Repo Auto’s check numbers by which the payments were made, and the cashier’s ID number
27 noted on the Board’s receipt (if any).

1 Based on our review of the list, all of the itemized payments had been properly applied to their
2 corresponding liabilities as listed, except for five. Of those five asserted payments, three do not
3 represent successful payments because the checks were returned due to insufficient funds. The other
4 two were shown on the listing as having no Board receipt, and applicant has not provided any other
5 evidence that these payments were received by the Board and deposited. Additionally, we find that,
6 while applicant argues that Bank Repo Auto paid \$855,695.72 toward its liabilities for the period
7 April 1, 2006, through June 30, 2007, Board records indicate that \$348,572.05 of this amount was
8 applied to Bank Repo Auto's tax liabilities for earlier periods. Consequently, based on the available
9 evidence, we conclude that Bank Repo Auto received proper credit for all the payments it made for the
10 liability period at issue.

11 Applicant also contends that the liability established against Bank Repo Auto for the first and
12 second quarters of 2007 are excessive. Applicant provided a list of vehicle sales for the period July 10,
13 2004, through April 2, 2007, and indicated that it will file the sales and use tax returns for the first and
14 second quarters of 2007, with supporting documents, to report the correct amount of taxable sales for
15 these quarters. However, applicant has not provided the promised returns or any further documents
16 relating to Bank Repo Auto's 2007 sales.

17 We find that the Department's use of average daily taxable sales to estimate unreported taxable
18 sales was reasonable. While applicant has provided some records of Bank Repo Auto's sales for the
19 first and second quarters of 2007, applicant has failed to provide any source documents to support his
20 contention that the lists he provided are accurate or that they include all the sales Bank Repo Auto
21 made for those quarters. We have reviewed the records provided, and our review disclosed
22 inconsistencies. Also, those records included sales only through April 2, 2007, although there is
23 evidence that taxable sales were made through June 30, 2007. Thus, we believe that taxable sales from
24 April 3, 2007 through June 30, 2007, were not included in the list that applicant provided to the
25 Department. Absent additional records from which a more accurate estimate may be made, we
26 recommend no adjustment.

27 We note that applicant also argues for adjustments because Bank Repo Auto sold some of the
28 receivables from its financed vehicle sales to Car Financial. Bank Repo Auto was the seller of those

1 vehicles, and although it sold the receivables to a third party, it remains liable for the sales tax on such
2 sales. Accordingly, we recommend no adjustment to the measure of tax.

3 **Issue 3:** Whether applicant has established reasonable cause sufficient to relieve the late-
4 payment and failure-to-file penalties originally assessed against Bank Repo Auto. We conclude that he
5 has not.

6 There is no statutory or regulatory authority for relieving these penalties in section 6829
7 determinations, but if taxpayer could show that the penalties should be relieved as to Bank Repo Auto
8 under Revenue and Taxation Code section 6592, the relief would also inure to taxpayer's benefit.
9 Petitioner submitted the required declaration signed under penalty of perjury in which he requests
10 relief from the penalties, arguing that, in the Statement of Account dated September 1, 2009, interest
11 and penalties were charged for the period May 2007 through September 2009. Applicant contends
12 that, since Bank Repo Auto did not sell any vehicles after April 2007, there is no basis for the penalty
13 and interest charges. Applicant also reiterates his arguments addressed above, including that he was
14 not the only responsible person for Bank Repo Auto, and therefore, he should not be liable for the
15 entire amount of the penalties.

16 Applicant is mistaken regarding penalties having been charged for the period May 2007
17 through September 2009. Only interest was accrued during this period, and interest will continue to
18 accrue pursuant to section 6591 until the tax has been paid in full. With respect to various arguments
19 that we addressed in Issue 2, they do not provide reasonable cause to relieve the penalties as to Bank
20 Repo. In short, applicant has not provided an explanation why Bank Repo Auto did not timely pay the
21 tax due or file all the returns it was required to file. Accordingly, we recommend relief be denied.

22 **OTHER DEVELOPMENTS**

23 None.

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25 Summary prepared by Rey Obligacion, Retired Annuitant
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