

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
GURMAIL SINGH) Account Number: SR ARH 53-004928
) Case ID 487083
Petitioner) Tracy, San Joaquin County

Type of Liability: Responsible person liability
Liability period: 10/01/06 – 12/31/07

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Responsible person liability	\$122,406 ¹		
As determined:		\$104,047.12	\$21,560.10
Less payments by another individual		- 3,201.53	<u>00.00</u>
Balance, protested		<u>\$100,845.59</u>	<u>\$21,560.10</u>
Proposed tax redetermination		\$104,047.12	
Interest through 8/31/11		33,704.35	
Penalty for late payment of a return		781.10	
Penalty for failure to file returns		9,976.80	
Finality penalty		<u>10,802.20</u>	
Total tax, interest, and penalty		\$159,311.57	
Payments		- 3,201.53	
Balance Due		<u>\$156,110.04</u>	
Monthly interest beginning 9/1/11		<u>\$ 504.23</u>	

UNRESOLVED ISSUES

Issue 1: Whether petitioner is personally liable as a responsible person pursuant to Revenue and Taxation Code section 6829 for the unpaid liabilities of Pizza Food Enterprises, Inc. We conclude petitioner is personally liable.

Pizza Food Enterprises operated pizza restaurants under seller's permit SR ARH 100-810914

¹ The disputed amount is lower than the amount shown on the D&R because of payments made by another individual after the D&R was issued.

1 from August 16, 2006, until December 31, 2007. At the time its business terminated, the corporation
2 had unpaid liabilities related to late payment of the return for the first quarter 2007 (1Q07) and two
3 Notices of Determination issued August 31, 2007 (for excess tax reimbursement collected for 4Q06),
4 and April 3, 2008 (for failure to file returns for 2Q07 and 3Q07).

5 The Department determined that the corporation had added or included sales tax reimbursement
6 in its retail sales. This is one of the four conditions for imposing personal liability on petitioner for the
7 tax debts incurred by the corporation, and it is undisputed. The other three conditions, which petitioner
8 does dispute, are that the corporation's business was terminated, petitioner must have been responsible
9 for sales tax compliance by the corporation, and petitioner must have willfully failed to pay or cause to
10 be paid taxes due from the corporation.

11 The Department determined that the corporation had terminated its business activities because
12 the seller's permit was closed, effective December 31, 2007, and the records of the Secretary of State
13 indicated that the corporate status was suspended as of May 1, 2008. The Department concluded that
14 petitioner was a responsible person under section 6829 because of evidence that he was a manager and
15 corporate officer. It also determined that taxpayer willfully failed to pay, or cause to be paid, the
16 corporation's tax liabilities because the corporation had funds available at the time the taxes became
17 due and chose to pay other creditors.

18 Petitioner contends that he is not personally liable for the corporation's unpaid tax liabilities
19 because: 1) the business did not terminate but was purchased by another party after petitioner was no
20 longer employed by the corporation; 2) he was not an owner of the corporation, but was merely the
21 operations manager; and 3) he did not willfully fail to pay, or cause to be paid, the taxes owed by the
22 corporation.

23 Regarding the contention that the business did not terminate, the question at issue is not
24 whether the business closed, but whether the *corporation* ceased the subject business operations. We
25 find the corporation ceased its business activities on or about December 31, 2007, when the seller's
26 permit was closed. There is no evidence that the corporation's business operations continued after that
27 date.

1 Regarding the issue of whether petitioner was a responsible person, petitioner was listed as the
2 chief executive officer, the secretary, or the president of the corporation on various documents; he
3 signed the sales and use tax return for 4Q06 as owner and the return for 1Q07 as president; he listed
4 the Board of Equalization as a creditor as part of his Chapter 7 bankruptcy; and he was identified as a
5 responsible person in a questionnaire completed by an employee of the corporation. Petitioner states
6 that he was not an owner of the corporation, and two other individuals, Kulsharan Kaur and Randeep
7 Singh Dhillon, were responsible for the corporation's sales and use tax compliance. Regarding the fact
8 that he listed the Board as a creditor as part of his bankruptcy, he says that action was on advice of
9 counsel. Moreover, petitioner alleges that he was not employed by the corporation after December
10 2007, and therefore was clearly not responsible for any amounts due for the fourth quarter 2007, since
11 the return was due January 31, 2008. Further, petitioner states that the corporation's business banking
12 accounts were located at San Joaquin Bank, and he had the signatory authority on six of the
13 corporation's business bank accounts at that bank, five of which were closed on August 22, 2007, and
14 one of which was closed January 4, 2008.

15 Petitioner admits he was employed by the corporation from August 2006 through December
16 2007, and he has provided no evidence that his employment by the corporation ended in 2007. Also,
17 since the evidence consistently indicates that Mission Bank was the bank through which the
18 corporation transacted its business, we do not find the closure of corporate bank accounts at San
19 Joaquin Bank to be persuasive evidence that petitioner's authority to run the business was limited. His
20 positions and the documents he signed on behalf of the corporation indicate that he was responsible for
21 sales and use tax compliance. As to petitioner's assertion that other individuals were responsible
22 persons, more than one person may be responsible (and more than one can be held liable pursuant to
23 section 6829 for the same corporate liability). In fact, in this case, the Department has issued a
24 determination against Mr. Dhillon, which he has not protested. Thus, the fact that others may have
25 been responsible does not eliminate petitioner's liability. For all these reasons, we find that petitioner
26 was a responsible person as defined by section 6829.

27 With respect to willfulness, personal liability can be imposed on a responsible person under
28 section 6829 only if that person willfully failed to pay or to cause to be paid taxes due from the

1 corporation, which means that the failure was the result of an intentional, conscious, and voluntary
2 course of action (even if without a bad purpose or evil motive). A person is regarded as having
3 willfully failed to pay taxes, or to cause them to be paid, where he or she had knowledge that the taxes
4 were not being paid and had the authority to pay taxes or cause them to be paid, but failed to do so.

5 The first requirement for willfulness is knowledge. Although petitioner claims he had no
6 knowledge of the corporation's sales and use tax liability, we do not find that claim persuasive. Based
7 on petitioner's signature on the 4Q06 and 1Q07 returns, and his status as president, CEO, and owner,
8 we find petitioner must have been aware of the sales and use tax liabilities, and he has provided no
9 substantive argument to the contrary. Consequently, we find that taxpayer knew that the corporation
10 had not paid the full amounts due for the period at issue.

11 Willfulness also requires that the responsible person must have been able to pay, or cause to be
12 paid, the taxes when due. We find for the same reasons noted above that petitioner had authority to
13 cause the taxes due to be paid. Regarding whether the corporation had sufficient funds to pay the taxes
14 due, we note that during the applicable periods, the corporation was making substantial sales, as
15 evidenced by its reported gross receipts, and it made rent payments and payments to vendors and
16 suppliers during the period at issue. We find that funds were available to pay the sales tax liability, but
17 the corporation's management chose to pay other creditors instead. In that regard, petitioner has
18 acknowledged that he had the authority to pay the corporation's day-to-day expenses, but asserts that
19 Mr. Dhillon made all decisions regarding payments to government al agencies. However, petitioner
20 has not provided documentation that his control over the financial affairs of the corporation was
21 restricted in that manner. In the absence of such evidence, and considering that the corporation had the
22 ability to make payments to creditors and pay wages to employees, we find that petitioner willfully
23 failed to pay the taxes or cause them to be paid. In summary, we conclude that all conditions have
24 been satisfied for imposing personal liability on taxpayer under section 6829 for the outstanding tax
25 liabilities of the corporation.

26 **Issue 2:** Whether taxpayer has established reasonable cause sufficient for relieving the late-
27 payment, failure-to-file, and finality penalties originally assessed against the corporation. We
28 conclude that he has not.

