

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 LAVJINDER SINGH) Account Number: SR GHC 53-003058
 6 Petitioner) Case ID 415065
)
) Hayward, Alameda County

7 Type of liability: Responsible person liability

8 Liability Period: 7/1/05 – 9/30/05

9 Item Disputed Amount

10 Responsible person liability \$25,092

	<u>Tax</u>	<u>Penalty</u>
11 As determined, protested	\$21,950.00	\$3,141.60
12 Proposed tax redetermination	\$21,950.00	
13 Interest to 11/30/10	9,963.27	
Late payment penalty	<u>3,141.60</u>	
14 Total tax, interest, and penalty	\$35,054.87	
15 Payments	<u>-3,563.22</u>	
Balance due	<u>\$31,491.65</u>	
16 Monthly interest beginning 12/01/10	<u>\$107.26</u>	

17 UNRESOLVED ISSUES

18 **Issue 1:** Whether petitioner is personally liable as a responsible person for the unpaid
 19 liabilities of S & V, Inc. (S & V) (SR GHC 100-536474), for the period July 1, 2005, through
 20 September 30, 2005. We find that petitioner is personally liable.

21 S & V operated a gas station and mini-mart beginning February 1, 2005. Mr. Manpreet
 22 Sandhu, the president of S & V, submitted a Notice of Closeout for Seller's Permit on November 21,
 23 2005, stating that the business was closed out on September 30, 2005, and thus the permit was closed
 24 out effective September 30, 2005. At close out, S & V had unpaid liabilities with respect to sales and
 25 use tax returns (SUTR's) filed without payment for the periods July, August, and September, 2005,
 26 consisting of \$21,950.00 in tax, \$3,727.09 in interest, and \$3,141.60 in late payment penalties. The
 27 Sales and Use Tax Department (Department) conducted an investigation and determined that petitioner
 28

1 is personally liable for S & V's unpaid liabilities because he was a responsible person pursuant to
2 Revenue and Taxation Code section 6829.

3 The Department made this determination based on several documents that identified petitioner
4 as secretary, treasurer, chief financial officer (CFO), owner, and director. Petitioner also signed
5 S & V's SUTR's for May and June 2005 and signed corporate checks issued to the Board on June 30,
6 2005, and July 30, 2005, discussed with a Board employee in September 2005 that he continued to
7 operate S & V's business when a buyer backed out and the escrow was cancelled, and was contacted
8 by the Board staff in October 2006 to discuss S & V's unpaid liabilities. S & V's bookkeeper also
9 identified petitioner as the responsible person who had a duty to act for S & V in sales and use tax
10 matters. The Department concluded that petitioner was willful in his failure to pay S & V's unpaid
11 liabilities because S & V had funds to pay the taxes due, but instead paid salaries in 2005 to Mr.
12 Sandhu and paid other creditors. The Department also found that S & V included or added tax
13 reimbursement on its sales of tangible personal property during the liability period based upon an
14 undated Business Operations Questionnaire completed by S & V's bookkeeper at Cutler Associates,
15 stating that S & V collected sales tax reimbursement. In addition, according to Board records, in a
16 conversation with the Board on October 12, 2006, petitioner stated that S & V collected sales tax
17 reimbursement. Thus, the Department concluded all requirements for liability under section 6829 had
18 been met and issued a Notice of Determination to petitioner as a responsible person for the unpaid
19 liabilities of S & V.

20 In his petition for redetermination, petitioner concedes two of the four conditions for imposing
21 liability pursuant to section 6829, that S & V's business has been terminated and that it collected or
22 added sales tax reimbursement on its taxable sales. However, petitioner argues that Mr. Sandhu, as
23 president of S & V, should be held solely liable for S & V's unpaid liabilities because, as president,
24 Mr. Sandhu had more responsibilities at S & V than petitioner. We note that the Department issued a
25 Notice of Determination to Mr. Sandhu for the same liability pursuant to section 6829. Since
26 Mr. Sandhu did not file a petition for redetermination, that liability is final. However, more than one
27 person may be held personally liable as a responsible person for a corporation's unpaid liabilities under
28 section 6829, so long as the requirements for imposing such liability on each person are satisfied. Of

1 course, the liability will be collected only once, without regard to how many persons are held liable.
2 Thus, we find that petitioner's argument regarding Mr. Sandhu's liability is not relevant to the issue of
3 whether petitioner is liable under section 6829.

4 Liability under section 6829 may be imposed only on a responsible person, which means a
5 person having control or supervision of, or who was charged with the responsibility for, the filing of
6 returns or the payment of tax or who had a duty to act for the corporation in complying with any
7 provision of the Sales and Use Tax Law when the taxes became due. Petitioner, as CFO, signed
8 SUTR's and corporate checks, which is proof that petitioner was directly involved in and responsible
9 for S & V's tax compliance. By signing the SUTR's, he made an express representation that he was a
10 person charged with the responsibility for filing returns or payment of taxes for the corporation when
11 the taxes for May and June 2005 became due, immediately prior to the months at issue here. There is
12 no evidence that petitioner's responsibilities or job duties as CFO changed during the liability period
13 from July 1, 2005, through September 30, 2005, and therefore, we find that petitioner continued to
14 have responsibility for S & V's tax compliance during the months at issue.

15 With respect to willfulness, personal liability can be imposed on a responsible person under
16 section 6829 only if that person willfully failed to pay or to cause to be paid taxes due from the
17 corporation, which means that the failure was the result of an intentional, conscious, and voluntary
18 course of action (even if without a bad purpose or evil motive). A person is regarded as having
19 willfully failed to pay taxes, or to cause them to be paid, where he or she had knowledge that the taxes
20 were not being paid (or lacked knowledge in reckless disregard of his or her duty to know) and had the
21 authority to pay taxes or cause them to be paid, but failed to do so.

22 The liabilities at issue arose from monthly SUTR's filed by S & V for the periods July 1, 2005,
23 through September 30, 2005. There is no direct evidence that petitioner knew or should have known
24 that the SUTR's were filed without remittance at the time taxes became due with each monthly return,
25 or at the time the SUTR's were filed. However, as CFO, he was directly responsible for and involved
26 with S & V's sales and use tax matters. During the liability period at issue, there is no evidence that
27 petitioner's job duties as CFO changed. Therefore, absent any changes of petitioner's job duties
28 during the liability period at issue, we find that petitioner was responsible for ensuring S & V's sales

1 and use tax compliance. Thus, he knew or should have known that S & V had unpaid tax liabilities
2 based on the fact that S & V had filed returns for July, August, and September 2005 showing a tax
3 liability without submitting payment, and, if he did not know, he lacked knowledge only in reckless
4 disregard of his duty to know.

5 Additionally, we find that petitioner acted consciously and voluntarily to not pay the taxes due
6 to the Board because S & V had funds available but paid other liabilities, instead of paying the taxes
7 and penalties owed to the Board. This is evidenced by the fact that Mr. Sandhu was paid wages of
8 \$30,000 during 2005, which amount he reported in a Statement of Financial Affairs filed with the
9 United States Bankruptcy Court Eastern District of California. Additionally, by filing SUTR's, S & V
10 indicated that it was making sales, thus, it was paying corporate expenses, and paying its vendors for
11 the products and gasoline that it sold at retail. Moreover, S & V was collecting sales tax
12 reimbursement on those retail sales. Thus, we find that S & V had funds available, but petitioner, who,
13 as CFO, was responsible for ensuring S & V's sales and use tax compliance, intentionally, consciously,
14 and voluntarily made the decision to pay other creditors rather than pay to the Board the taxes that
15 became due for the period from July 1, 2005, through September 30, 2005.

16 We conclude that petitioner is personally liable as a responsible person for purposes of section
17 6829 for S & V's liabilities for the period in issue.

18 **Issue 2:** Whether petitioner has established reasonable cause sufficient to relieve the penalties
19 for late payment of returns originally assessed against S & V for the period July 1, 2005, through
20 September 30, 2005. We conclude that he has not.

21 There is no statutory or regulatory authority for relieving the penalties at issue in section 6829
22 determinations, but if petitioner could show that the penalties should be relieved as to S & V under
23 section 6592, the relief would also inure to petitioner's benefit. On May 21, 2009, petitioner submitted
24 a signed declaration pursuant to section 6592 requesting relief of the penalties. However, he merely
25 stated that he left the business because S & V was experiencing financial hardships. He did not
26 provide any explanation for S & V's failure to pay the taxes due. Thus, we conclude that petitioner has
27 not provided reasonable cause for S & V's failure to timely pay the amounts reported on returns, and
28 that there is no basis for relieving the late payment penalties.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OTHER DEVELOPMENTS

None.

Summary prepared by Rey Obligacion, Retired Annuitant