

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING SUMMARY**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
SCOTT THOMAS TURNER )  
Petitioner )  
Account Number SR BH 53-005316  
Case ID 513953  
Albuquerque, New Mexico

Type of Liability: Responsible person liability  
Liability period: 04/01/04 – 05/13/07

<u>Item</u>	<u>Disputed Amount</u>
Responsible person liability	\$169,212 <sup>1</sup>
Tax as determined and protested	\$154,813.10
Interest through 08/31/12	104,542.33
Late payment penalties	34,574.33
Total tax, interest, and penalties	\$293,929.76
Payments	- 20,175.42
Balance Due	<u>\$273,754.34</u>
Monthly interest beginning 09/01/12	<u>\$ 673.19</u>

This matter was scheduled for Board hearing on February 28, 2012, but petitioner did not respond to the Notice of Hearing and the matter was scheduled for decision on the nonappearance calendar. Petitioner subsequently requested that the matter be rescheduled for hearing. The matter was rescheduled for hearing on May 30, 2012, but was postponed at petitioner’s request to allow additional time to submit an opening brief.

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Paradigm San Francisco Ventures, Inc. pursuant to Revenue and Taxation Code section 6829. We conclude petitioner is personally liable.

<sup>1</sup> The disputed amount represents the tax and penalty less the payments, which were all made by others.

1           Paradigm San Francisco Ventures, Inc. (Paradigm) (SR BH 100-291574) operated an arcade  
2 and restaurant from September 2003 until May 2007. At the time its business terminated, Paradigm  
3 had unpaid liabilities related to several returns filed with no remittance or partial remittance. The Sales  
4 and Use Tax Department (Department) concluded that that all four conditions for imposing personal  
5 liability on petitioner pursuant to Revenue and Taxation Code section 6829 had been met, and thus  
6 issued a Notice of Determination to petitioner for Paradigm's unpaid tax-related liabilities. There is no  
7 dispute regarding the first two conditions, that Paradigm's business was terminated in May 2007, and  
8 that the business had collected sales tax reimbursement with respect to its retail sales. Petitioner does  
9 dispute the remaining two conditions, that he was responsible for Paradigm's sales tax compliance and  
10 that he willfully failed to pay or to cause to be paid taxes due from Paradigm.

11           Petitioner was Paradigm's Chief Financial Officer (CFO), he had signed Paradigm's seller's  
12 permit application as its treasurer, and he conceded at the appeals conference that he was responsible  
13 for filing Paradigm's sales and use tax returns until he moved to New Mexico in July 2004, after which  
14 he alleges that his duties were limited to handling payroll. He contends, however, that he did not  
15 possess the authority normally associated with the position of CFO. He states he was unable to issue  
16 any checks without the express authorization of Paradigm's president, Steven Dooner.<sup>2</sup> Regarding the  
17 alleged change in responsibilities after petitioner's move to New Mexico, other than petitioner's  
18 statements, there is no evidence of such change, and petitioner continued to sign sales and use tax  
19 returns and prepayment forms after his move. Thus, we find that petitioner was a responsible person  
20 as defined by section 6829 for the entire period at issue.

21           For purposes of section 6829, petitioner willfully failed to pay or to cause to be paid  
22 Paradigm's sales and use tax liability if he had knowledge of the tax due and had the authority and  
23 ability to pay or to cause to be paid that tax. Petitioner was responsible for filing returns and he  
24 contacted the Board regarding the liability on various occasions as late as March 22, 2007. Thus, we  
25 find he had knowledge that the tax was due. Petitioner conceded at the appeals conference that

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27 <sup>2</sup> The Department issued to Mr. Dooner a Notice of Determination pursuant to section 6829 for the same liability, and that  
28 determination is now final since Mr. Dooner did not submit a timely petition for redetermination.

1 Paradigm continued to pay wages until its business operations were terminated, and there is evidence  
2 that Paradigm continued to pay suppliers. Thus, we find Paradigm had funds to pay the sales and use  
3 tax liability, meaning that if petitioner had the necessary authority to pay or to cause to be paid the  
4 taxes due, he would have also had the ability to do so. This leads to the primary disputed issue, which  
5 is whether petitioner had the authority to pay or to cause to be paid the taxes Paradigm owed to the  
6 Board. Petitioner asserts that Mr. Dooner made all of the financial decisions for Paradigm and that  
7 petitioner was required to follow each of Mr. Dooner's instructions. As support, petitioner has  
8 provided numerous emails in which he informed Mr. Dooner of various debts, and Mr. Dooner then  
9 responded regarding which liabilities to pay. Petitioner also notes that, in her responses to an  
10 employee questionnaire, Laura O'Neill, a former Paradigm employee, identified petitioner as an  
11 accountant who took orders or direction from Mr. Dooner. Petitioner also states that he was not at the  
12 bankruptcy meeting for the corporation, arguing that he would have attended the meeting if he were a  
13 person capable of making financial decisions.

14 In response, the Department has noted that the emails were not requests for direction but were  
15 collaborative in nature. Specifically, the Department refers to comments by petitioner that stated he  
16 would transfer money among accounts and pay certain liabilities rather than asking for direction. In  
17 addition, Mr. Dooner has provided a declaration under penalty of perjury stating that all bill payments  
18 were based on joint collaboration between him and petitioner. Accordingly, the Department asserts  
19 that petitioner did possess the power to make financial decisions. Also, the Department asserts that  
20 Ms. O'Neills's questionnaire should not be given any weight because she handled entertainment and  
21 interior decoration issues, rather than accounting. Petitioner disagrees, stating that Ms. O'Neill was  
22 directly involved in all areas of the operation.

23 There is no dispute that petitioner held the title of CFO/controller of Paradigm. Inherent in that  
24 position is the authority and ability to act on behalf of the corporation with respect to sales and use tax  
25 matters. Our review of the subject emails reveals that petitioner participated in the decision-making  
26 process regarding Paradigm's financial obligations, and no restriction by Mr. Dooner of petitioner's  
27 financial authority is reflected in the emails. Additionally, petitioner conceded at the appeals  
28 conference that he took the corporate checks with him when he moved to New Mexico. As a result, he

1 had the ability to issue checks from Paradigm’s account throughout the period at issue. While both  
2 parties take dramatically different positions regarding the weight to be accorded Ms. O’Neill’s  
3 questionnaire, we find that issue irrelevant because the questionnaire is silent regarding our primary  
4 inquiry, whether petitioner was prevented from paying Paradigm’s tax liabilities, and is therefore not  
5 probative. Similarly, petitioner’s absence from the bankruptcy meeting is not probative of whether he  
6 was prevented from exercising his inherent authority as CFO/controller to pay Paradigm’s tax  
7 liabilities. In summary, we find that the evidence establishes petitioner had such authority and also had  
8 the ability to pay Paradigm’s tax liabilities since there were funds available to do so, but that the  
9 corporation chose to pay other creditors instead, and we conclude that all conditions have been  
10 satisfied for imposing the subject personal liability on petitioner under section 6829.

11 **OTHER MATTERS**

12 Although we informed petitioner that he could request relief of the late payment penalties on  
13 behalf of the corporation, he has not done so. Accordingly, we have no basis on which to consider  
14 recommending relief of the penalties.

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