

## 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 ERIC THOMAS WELCH ) Account Number: SR KH 53-001911  
 ) Case ID 325518  
 6 Petitioner ) Roseville, Placer County

7  
 8 Type of Liability Responsible person liability

9 Liability Period: 7/1/00 - 7/11/01<sup>1</sup>

10 Item Amount in Dispute

11 Responsible person liability \$11,772

	<u>Tax</u>	<u>Penalties</u>
12		
13 As determined	\$65,701.57	\$24,491.15
14 Adjustment: Sales and Use Tax Department	-23,964.00	-5,901.13
14 Appeals Division	<u>                    </u>	<u>-6,818.85</u>
15 Proposed redetermination	\$41,737.57	\$11,771.17
15 Less concurred	<u>-41,737.57</u>	<u>00.00</u>
16 Balance, protested	<u>\$ 00.00</u>	<u>\$11,771.77</u>

17 Proposed tax redetermination \$41,737.57

17 Interest to 8/31/10 36,279.86

18 Late Payment Penalty 4,854.99

Late Prepayment Penalty 967.38

19 Penalty for failure to file a return 2,771.60

20 Finality penalty 3,177.20

Total tax, interest, and penalties \$89,788.60

21 Monthly interest beginning 9/1/10 \$243.47

22  
 23 This appeal was scheduled for Board hearing on July 15, 2010, but was postponed at  
 24 petitioner's request due to a family emergency.

25  
 26  
 27 <sup>1</sup> The original liability period was July 1, 2000, through September 14, 2001. Following its review of additional  
 28 documents provided by petitioner, the Department concluded that the corporation's last sales occurred on July 11, 2001,  
 and recommended that the assessed liability for periods after July 11, 2001, be removed.

**UNRESOLVED ISSUE**

1  
2 **Issue:** Whether petitioner has established reasonable cause sufficient to relieve the penalties  
3 originally assessed against Central Auto World, Inc. (CAW), seller's permit SR KH 97-093016, for the  
4 period July 1, 2000, through July 11, 2001. We conclude that there is no basis for relief.

5 CAW operated a used car dealership that terminated its business on July 11, 2001. Its  
6 corporate officers were petitioner (president), Jerry Marles Tilton, (vice-president), and Brian Sheldon  
7 Earle (chief financial officer/secretary). On September 14, 2001, the Sales and Use Tax Department  
8 (Department) issued a jeopardy assessment against CAW for the second and third quarter 2001. CAW  
9 did not petition or pay the jeopardy assessment within the required 10 days and thus, finality penalties  
10 were assessed. On December 12, 2001, prior to filing for bankruptcy, CAW made a payment of  
11 \$30,000. Subsequently, CAW filed for Chapter 7 bankruptcy on December 13, 2001, at which time all  
12 of its assets were turned over to the bankruptcy trustee. At the time that CAW filed for bankruptcy, its  
13 outstanding liabilities consisted of \$65,701.57 in tax, \$24,251.81 in interest, and \$24,491.15 in  
14 penalties for late payment of tax, late prepayment of tax, failure to file returns, and failure to timely  
15 pay the determinations, and amnesty interest penalties. The Department concluded that petitioner,  
16 Mr. Tilton, and Mr. Earle were personally liable as responsible persons pursuant to Revenue and  
17 Taxation Code section 6829 for CAW's unpaid liability. Petitioner concedes that he is liable as a  
18 responsible person, but seeks relief from the penalties imposed upon CAW and assessed against him.<sup>2</sup>

19 There is no statutory or regulatory authority for relieving penalties in section 6829  
20 determinations, but if CAW were relieved of any of the penalties, that relief would also inure to the  
21 benefit of any responsible person being held liable for CAW's tax liabilities. Petitioner has filed a  
22 request for relief from the aforementioned penalties, signed under penalty of perjury. However,  
23 petitioner's request for relief references events that occurred at or after the time of closure of CAW's  
24 business on July 11, 2001, and does not provide any explanation for CAW's failure to timely pay the  
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26 <sup>2</sup> Mr. Tilton and Mr. Earle also conceded liability under section 6829 and sought relief of the penalties, and we issued a  
27 D&R to each of them on the same date as the D&R issued to petitioner, with the same recommendation. The appeals of  
28 Mr. Tilton and Mr. Earle were also scheduled for the same date as petitioner's hearing, but each of them submitted a  
settlement proposal. In light of the dispute, we have not delayed resolution of the instant matter while the settlement  
proposals of the other responsible persons are under consideration.

1 tax due with the returns for the third quarter 2000 (3Q00) or 4Q00 when they became due, nor does it  
2 address CAW's failure to timely submit a prepayment for the period October 1, 2000, to October 31,  
3 2000, all of which occurred well before the events petitioner cites as his grounds for relief.

4 Accordingly, we find no basis for recommending relief of the penalties imposed during these earlier  
5 periods.

6 With respect to penalties for failure to file returns and finality penalties assessed after CAW's  
7 closure, petitioner argues that CAW could not file a return for 2Q01 because the Department of Motor  
8 Vehicles (DMV) closed the business and seized its records. However, the DMV Licensee Out of  
9 Business Report dated August 2, 2001, indicated that the closure of the business was voluntary and that  
10 supplies were surrendered to DMV at the time of closure. Thus, petitioner's argument is unpersuasive,  
11 particularly since CAW continued to operate and collect sales tax reimbursement through July 11,  
12 2001, which was past the end of the 2Q01 period. We also find that CAW's bankruptcy filing in  
13 December 2001 does not constitute reasonable cause for its failure to file a return for 2Q01, as the  
14 return for 2Q01 was due on or before July 31, 2001, over five months before the bankruptcy petition  
15 was filed. Petitioner also argues that CAW's failure to file a return for 2Q01 was the result of its belief  
16 that its payment of \$30,000 in December 2001 was sufficient to pay its entire tax liability. However,  
17 obviously an erroneous belief in December 2001 regarding the amount of tax due for 2Q01 does not  
18 represent reasonable cause for CAW's failure to file a return for 2Q01 by the due date several months  
19 earlier on July 31, 2001.

20 With respect to finality penalties, jeopardy determinations were mailed on September 14, 2001,  
21 to CAW's address of record and were not returned as undeliverable. Thus, we conclude CAW  
22 received them and had timely notice. The determinations informed CAW that, pursuant to Revenue  
23 and Taxation Code section 6537, the amounts determined would become final 10 days after service of  
24 the determination if not paid or petitioned within that 10 day period, resulting in the imposition of  
25 10-percent finality penalties. CAW failed to pay or petition the determinations within the 10-day  
26 period, and the finality penalties were imposed. None of the explanations provided by petitioner (the  
27 closure of the business with the DMV, the December 2001 payment to the Board, the bankruptcy  
28 filing, and the amount of liability set forth in the determinations) represents reasonable cause for

1 CAW's failure to pay the determinations or file petitions for redetermination by September 24, 2001.  
2 For all these reasons, we find there is no basis to recommend relief of the late-payment, late  
3 prepayment, failure-to-file and finality penalties.

#### 4 **RESOLVED ISSUE**

5 A 50-percent amnesty interest penalty of \$6,818.85 was imposed against CAW because the tax  
6 liability was incurred during amnesty-eligible periods, and CAW failed to apply for amnesty, or pay  
7 the tax and interest due, by March 31, 2005. (Rev. & Tax. Code, § 7074, subd. (a).) The amnesty  
8 interest penalty was included in the determination issued to petitioner as part of the unpaid liabilities of  
9 CAW. (Rev. & Tax. Code, § 6829, subds. (a), (e).)

10 Petitioner submitted declarations signed by him and his attorney, under penalty of perjury,  
11 requesting relief of the amnesty interest penalty. In his request, petitioner makes the same arguments  
12 as addressed above in Issue 1. Additionally, petitioner's counsel stated that relief from the amnesty  
13 interest penalty is appropriate because the Department initially failed to provide petitioner's counsel  
14 with a copy of the amnesty relief applications and failed to send the application to petitioner's correct  
15 address.

16 As discussed above, CAW ceased business operations on July 11, 2001, and filed for  
17 bankruptcy on December 13, 2001, at which time all of CAW's assets were turned over to the  
18 bankruptcy trustee, while the amnesty program did not commence until February 1, 2005, over three  
19 years later. Thus, by the time of the amnesty program, CAW was no longer operating and likely had  
20 no assets. Under the circumstances, we conclude that CAW's failure to participate in the amnesty  
21 program was due to reasonable cause and circumstances beyond its control. Accordingly, we  
22 recommend relief of the amnesty interest penalty, provided that, within 30 days from the date of the  
23 Notice of Redetermination, petitioner either pays in full the tax and interest due or enters into a  
24 qualifying installment payment agreement to pay the full tax and interest due within 13 months, and  
25 successfully completes that agreement.

#### 26 **OTHER DEVELOPMENTS**

27 None.

28 Summary prepared by Rey Obligacion, Retired Annuitant