

## 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 LI FANG YE ) Account Number: SR AP 53-004257  
 6 Petitioner ) Case ID 478046  
 )  
 ) San Marino, Los Angeles County

7 Type of Liability: Responsible person liability

8 Liability Period: 7/1/03 – 6/30/04

9 Item Disputed Amount

10 Responsible person liability \$42,365

	<u>Tax</u>	<u>Penalty</u>
12 As determined, protested	<u>\$36,175.00</u>	<u>\$6,190.30</u>
13 Proposed tax redetermination	\$36,175.00	
Interest to 3/31/11	21,600.84	
14 Penalty for late payment of a return	1,044.70	
15 Penalty for failure to file a return	2,572.80	
Finality penalty	<u>2,572.80</u>	
16 Total tax, interest, and penalty	<u>\$63,966.14</u>	
17 Monthly interest beginning 4/1/11	<u>\$211.02</u>	

## 18 UNRESOLVED ISSUES

19 **Issue 1:** Whether petitioner is personally liable as a responsible person for the unpaid  
 20 liabilities of China King Media (USA), Inc. (China King) (SR AP 100-126326) for the period July 1,  
 21 2003, through June 30, 2004. We find that petitioner is personally liable.

22 China King was a corporation engaged in business as a retailer and wholesaler of DVD's,  
 23 CD's, and other publishing materials from September 1, 2002, through December 20, 2004. China  
 24 King's seller's permit was closed out effective December 20, 2004, after Mr. Jason Rund, who had  
 25 been appointed the bankruptcy trustee on December 21, 2004, informed the Board on July 11, 2005,  
 26 that China King was in bankruptcy and that he immediately closed the business because it was not  
 27 viable. As relevant here, at the time of termination, China King had unpaid liabilities based on: 1) tax  
 28 of \$10,477 self-assessed in monthly returns filed without payment of the tax for the period April 1,

1 2004, through June 30, 2004; 2) a Notice of Determination for the period July 1, 2003, to March 31,  
2 2004, issued to China King on December 21, 2004, and becoming final on January 20, 2005, for tax of  
3 \$25,728; and 3) penalties totaling \$6,190.30 for late payment of returns, failure to file a return, and  
4 failure to timely pay a determination before it became final (finality penalty).

5 After the Board was informed of the termination, the Sales and Use Tax Department  
6 (Department) conducted an investigation and determined that petitioner is personally liable for China  
7 King's unpaid liabilities for the liability period pursuant to Revenue and Taxation Code section 6829,  
8 based on the following facts: (1) petitioner signed the annual sales and use tax return for the period  
9 July 1, 2002, through June 30, 2003 on behalf of China King, and personally appeared at a Board  
10 district office on February 13, 2004, to pay China King's sales and use tax liability for such period; (2)  
11 several documents identified petitioner as an officer of, and signatory to execute all documents on  
12 behalf of, China King; (3) China King's accountant, Rena Lee, identified petitioner as a person having  
13 control, supervision, responsibility, or duty to act for China King in sales and use tax matters when the  
14 business was terminated; (4) petitioner was identified as a contact person on statements from China  
15 King's landlord; and (5) petitioner signed China King's Articles as an incorporator and was identified  
16 as China King's initial agent for service of process. The Department also found that China King  
17 collected sales tax reimbursement on its taxable sales based on the sales tax deduction claimed on  
18 China King's annual return, and that petitioner had been willful in her failure to pay the outstanding  
19 liabilities of China King because, although China King had funds available, they were used instead to  
20 pay vendors and other creditors.

21 Petitioner concedes that she was responsible for reporting and paying China King's sales and  
22 use tax liability for the period July 1, 2002, through June 30, 2003 (this liability had been reported and  
23 paid). However, petitioner claims that she was not responsible for the tax liability for the period in  
24 issue because she was removed as an officer of China King after June 30, 2003. Petitioner claims that  
25 another officer, Shu Xia Jin, was thereafter responsible for all of China King's financial affairs,  
26 including sales and use tax obligations. Petitioner asserts that the Department has not submitted  
27 documentation to show that petitioner was an officer of China King during the period in issue.  
28 Petitioner also asserts that, during the period in issue, her primary responsibility was purchasing

1 merchandise from suppliers. She contends that Ms. Lee was mistaken and uninformed when she  
2 identified petitioner as a person responsible for China King's sales and use tax matters after the  
3 business was terminated. Petitioner notes Ms. Lee was not an employee of China King, but instead  
4 was an employee of the accounting firm that provided services to China King. Petitioner submitted  
5 several documents showing that Shu Xia Jin was the financial officer and subsequently the president of  
6 China King, and was in charge of China King's operations beginning in mid 2003.

7 Petitioner also argues that she did not willfully fail to pay China King's tax liability. Petitioner  
8 explains that China King filed a lawsuit against her and others over their management of China King.  
9 She and the other employees then filed a cross action against China King for wrongful termination in  
10 connection with their removal from office. In that lawsuit, petitioner claims that a court order dated  
11 September 1, 2004, required her to transfer funds in certain bank accounts, for which she was a  
12 signatory, to China King, which she did, and China King was required to use these funds to pay its  
13 debts, including sales and use tax liabilities, but China King failed to do so. Thus, based on the  
14 foregoing, petitioner argues that she was not a responsible person and she did not willfully fail to pay  
15 the tax liabilities of China King.

16 There are four conditions for imposing liability against petitioner pursuant to section 6829, two  
17 of which are clearly satisfied: there is no dispute that China King's business operations were  
18 terminated on December 20, 2004, and evidence establishes that sales tax reimbursement was collected  
19 on taxable sales for such period. The third and fourth conditions are that petitioner must have been a  
20 responsible person for China King's sales and use tax compliance, and she must have willfully failed  
21 to pay or to cause to be paid the taxes due from China King during the liability period.

22 A responsible person for purposes of section 6829 is a person who had a duty to act for the  
23 corporation in complying with any provision of the Sales and Use Tax Law when the subject taxes  
24 became due, including responsibility for the filing of returns or the payment of tax. Petitioner argues  
25 that she was no longer an officer, claiming that she had been replaced by Shu Xia Jin in mid 2003.  
26 However, she has not submitted any corroborating evidence such as a Statement of Information filed  
27 with the Secretary of State reflecting her removal or replacement by Ms. Jin. Additionally, evidence  
28 indicates that Ms. Jin was employed in China as the corporate financial controller of China King's

1 parent company through May 24, 2004. The Minutes of Special Meeting by Domestic Corporation  
2 dated August 19, 2004, signed by the Chairman of the board and a director of China King, identified  
3 Candice Cai as the newly elected president, secretary, and financial officer of China King, and  
4 authorized Ms. Cai to replace petitioner and the former president of China King as the authorized  
5 signatories to all documents on behalf of China King, including bank checks, lease agreement, and  
6 other legal documents. This document indicates that petitioner was not removed as the secretary and  
7 chief financial officer of China King until August 19, 2004. Accordingly, we find that petitioner was  
8 the secretary and chief financial officer of China King from September 3, 2002, through August 19,  
9 2004, and as the financial officer, she had the duty to act for China King in its financial affairs  
10 including compliance with the Sales and Use Tax Law. Thus, we conclude that petitioner was a  
11 responsible person when the taxes at issue became due for the liability period.

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

19 As the financial officer of China King until August 19, 2004, petitioner knew or should have  
20 known when China King's sales and use tax returns were due and that taxes were required to be paid  
21 with those returns. China King continued to make taxable sales and collect sales tax reimbursement,  
22 and petitioner should have known that returns were required to have been filed and applicable taxes  
23 remitted. Evidence also indicates that China King had sufficient funds to pay the taxes due. China  
24 King made payments of \$68,954.47 to its supplier from July 1, 2003, through June 30, 2004, and made  
25 payments of \$176,860.79 to its landlord from July 1, 2003, through November 12, 2004. As the  
26 financial officer of China King, petitioner had the authority to pay the taxes due through at least the  
27 day she was replaced by Ms. Cai, but instead used those funds to pay other creditors and debts.  
28

1 Finally, with respect to petitioner's argument that Ms. Jin should also be held personally liable  
2 for China King's unpaid liabilities, we note that more than one person may be held responsible for  
3 China King's unpaid liability (though the liability would be collected only once).<sup>1</sup> The Department  
4 conducted an investigation and found that the evidence submitted by petitioner is unpersuasive in  
5 establishing that Ms. Jin was a responsible person pursuant to section 6829. Thus, a Notice of  
6 Determination for China King's unpaid liability for the period in issue was not issued to Ms. Jin.

7 We conclude that all conditions for imposing liability on petitioner pursuant to section 6829 for  
8 the liability period have been satisfied.

9 **Issue 2.** Whether petitioner has established reasonable cause to relieve the penalties imposed  
10 on China King. We conclude that petitioner has not done so.

11 There is no statutory or regulatory authority for relieving penalties in section 6829  
12 determinations, but if China King were relieved of the penalties under section 6592, that relief would  
13 also inure to the benefit of petitioner. Petitioner submitted a declaration signed under penalty of  
14 perjury in which she requests relief from the penalties for the same reasons addressed under Issue 1.  
15 The request does not bear on the failures of China King that resulted in the penalties, and we therefore  
16 conclude that petitioner has not established reasonable cause for relieving the penalties.

17 **OTHER DEVELOPMENTS**

18 None.

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20 Summary prepared by Rey Obligacion, Retired Annuitant  
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28 <sup>1</sup> A Notice of Determination was issued to Ms. Cai, but only for the period July 1, 2004, through July 31, 2004.