

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION PETITION FOR REHEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:) Account Number SR KH 53-005446
 5 DAVID A. BARTEL) Case ID 518470
 6 Petitioner) City and County of San Francisco

7 Type of Liability: Responsible person liability

8 Liability period: 07/01/07 – 12/20/07

9 Item Disputed Amount

10 Responsible person liability \$43,964

	<u>Tax</u>	<u>Penalty</u>
11 As determined	\$270,283.90	\$47,972.00
12 Post D&R adjustment	- 73,301.90	-27,673.80
13 Post Board hearing adjustment	<u>-157,560.00</u>	<u>-15,756.00</u>
14 Proposed redetermination, protested	<u>\$ 39,422.00</u>	<u>\$ 4,542.20</u>
15 Proposed tax redetermination	\$ 39,422.00	
16 Interest	13,173.47	
17 Penalty for failure to file prepayment	600.00	
18 Penalty for late payment of return	<u>3,942.20</u>	
Total tax, interest, and penalty	\$57,137.67	
Payments	<u>- 57,137.67¹</u>	
Balance due	<u>\$ 00.00</u>	

19 The Board heard this matter on March 20, 2012, and concluded that petitioner was personally
 20 liable pursuant to Revenue and Taxation Code section 6829 for the tax debts incurred by Tracy
 21 Chevrolet, Inc. (SR KH 99-265467) during the fourth quarter 2007 (4Q07). Petitioner filed a timely
 22 Petition for Rehearing (PFR).

23 **UNRESOLVED ISSUE**

24 **Issue:** Whether the petition for rehearing should be granted. We recommend that the Board
 25 revise its decision to hold petitioner personally liable for the tax debts incurred by Tracy Chevrolet for

26 _____
 27 ¹ On April 27, 2012, petitioner paid \$283,104.97. Thus, if the Board approves this recommendation to revise its decision,
 28 that would result in an overpayment of \$225,967.30. A claim for refund of that overpayment will be timely if it is filed
 within six months from the date the determination becomes final. (Rev. & Tax. Code § 6902, subd. (a)(1).)

1 the period December 7, 2007, through December 20, 2007, and that the petition for rehearing be
2 denied.

3 In his petition for hearing, petitioner asserts that he should be held liable only for the taxes
4 incurred after he actually became a responsible person on December 7, 2007. He further contends that
5 the \$10,000.00 paid with the return represents the entire amount of taxes due for the period he was
6 responsible. While we do not agree with the legal basis for petitioner's contention and we believe our
7 prior recommendation and the Board's decision is consistent with the statutory wording of Revenue
8 and Taxation Code section 6829 and is logical, we conclude that in making our recommendation, we
9 overlooked the specific wording of California Code of Regulations, title 18, section (Regulation)
10 1702.5, subdivision (a). We believe that the most reasonable interpretation of that wording is that
11 petitioner cannot be held liable under section 6829 for the taxes incurred by Tracy Chevrolet on its
12 sales made prior to December 7, 2007, when petitioner became responsible for the sales and use tax
13 compliance of Tracy Chevrolet. Accordingly, we conclude that petitioner is liable for tax of \$41,150,
14 computed based on average daily tax reported for the fourth quarter 2007 multiplied by 14 for the days
15 of operation during which petitioner was a responsible person. Using the same prorated basis, we
16 conclude that \$1,728 of the \$10,000.00 payment made with the fourth quarter 2007 return should be
17 applied to amounts owed by petitioner. Thus, we find that petitioner's remaining tax liability is
18 \$39,422 (\$41,150 - \$1,728). Further, we find petitioner is liable for the portion of the late payment
19 penalty applicable to his tax liability, \$3,942.20, and the penalty for failure to file a prepayment of
20 \$600. We recommend that the request for relief of penalties be denied.

21 We recommend that the Board revise its prior decision to redetermine the liability to tax of
22 \$39,422 and penalties of \$4,542.20, plus applicable interest. Since we conclude that no further
23 adjustments are warranted and that petitioner has not provided a basis for rehearing other than as
24 discussed above, we recommend that, with this adjustment, the petition for rehearing be denied.

25
26 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III
27
28