

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION FINAL ACTION SUMMARY**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
SHARON E. MELAMED ) Account Number SR AS 53-005300  
Petitioner ) Case ID 516151  
Encino, Los Angeles County

Type of Liability: Responsible person liability  
Liability period: 10/01/04 – 08/30/06

<u>Item</u>	<u>Disputed Amount</u>
Responsible person liability	\$230,471 <sup>1</sup>
Tax as determined and protested	\$198,107.85
Interest through 09/30/12	121,946.55
Negligence penalty	22,061.92
Finality penalty	<u>21,817.57</u>
Total tax, interest, and penalty	\$363,933.89
Payments	<u>- 11,516.53</u>
Balance Due	<u>\$352,417.36</u>
Monthly interest beginning 10/01/12	<u>\$ 932.96</u>

A Notice of Appeals Conference was mailed to petitioner’s address of record, and the notice was not returned by the Post Office. Petitioner did not respond to the notice or appear at the appeals conference, which was held as scheduled. We thereafter sent petitioner a letter offering her the opportunity to provide any additional arguments and evidence in writing she wished us to consider, but she did not respond. This matter was scheduled for Board hearing in July 2012, but petitioner did not respond to the Notice of Hearing. Accordingly, the matter was scheduled for decision on the Consent calendar, but was removed from that calendar at the request of Member Runner.

**UNRESOLVED ISSUES**

**Issue 1:** Whether the Notice of Determination was timely issued. We conclude that it was.

<sup>1</sup> The disputed amount represents the tax and penalties assessed to petitioner, less payments, all of which were made by others.

1 Nima Energy, Inc. (Nima) (SR AS 100-296556) operated a gas station from October 14, 2003,  
2 through August 30, 2006. At the time its business terminated, Nima had unpaid liabilities related to an  
3 audit of the period October 1, 2004, through August 30, 2006. The Sales and Use Tax Department  
4 (Department) concluded that petitioner is personally liable for Nima's unpaid liabilities pursuant to  
5 Revenue and Taxation Code section 6829, and it issued a determination to her on October 13, 2009.<sup>2</sup>  
6 Petitioner contends the determination was not issued timely.

7 The determination was issued October 13, 2009, which was less than three years after  
8 October 31, 2006, the last day of the calendar month following the quarterly period during which Nima  
9 closed. Thus, the determination was timely issued. (Rev. & Tax. Code, § 6829, subd. (f).)

10 **Issue 2:** Whether petitioner is personally liable as a responsible person for the unpaid liabilities  
11 of Nima pursuant to section 6829. We conclude petitioner is personally liable.

12 It is undisputed that Nima has ceased operations. Petitioner has not specifically disputed the  
13 Department's conclusion that Nima collected sales tax reimbursement with respect to its taxable sales,  
14 and we note this finding is supported by the fact that Nima claimed deductions for tax included on its  
15 sales and use tax returns. Petitioner does dispute the two remaining conditions for imposing personal  
16 liability on her pursuant to section 6829, that she was a responsible person and that she willfully failed  
17 to pay or to cause to be paid taxes due from Nima. Petitioner also contends that AAF Business  
18 Corporation, the successor to Nima, is solely responsible for any outstanding liabilities. Further,  
19 petitioner asserts that over \$150,000 remains in an escrow account created by Nima's successor which  
20 should be applied towards the liability.

21 Petitioner was the president of Nima, and signed several of the sales and use tax returns filed by  
22 Nima and various other documents associated with the administration of sales and use tax. Also,  
23 petitioner discussed the audit of Nima with the Department and communicated with the Department on  
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26 <sup>2</sup> The Department also found that Mehrnosh Tehrani is personally liable pursuant to section 6829 and found that AAF  
27 Business Corporation is liable as a successor to Nima pursuant to Revenue and Taxation Code section 6812. Mr. Tehrani  
28 did not appeal the determination issued to him, and at its July 2012 meeting, the Board upheld our recommendation to deny  
the appeal of AAF Business Corporation.

1 numerous occasions regarding Nima's sales and use tax compliance. Thus, we find that petitioner was  
2 a responsible person as defined by section 6829.

3 A responsible person's failure to pay or to cause to be paid the taxes due is willful for purposes  
4 of section 6829 where that the failure was the result of an intentional, conscious, and voluntary course  
5 of action (even if without a bad purpose or evil motive). A person is regarded as having willfully  
6 failed to pay taxes or to cause them to be paid where he or she had knowledge that the taxes were not  
7 being paid and had the authority to pay taxes or cause them to be paid, but failed to do so.

8 Since petitioner signed many returns and discussed the audit of Nima and other sales tax  
9 matters with the Department, we find taxpayer knew the tax was due and was not being paid. Also,  
10 petitioner signed several corporate checks, and she was president of Nima and a 50-percent owner of  
11 the corporation. Accordingly, we find petitioner had the authority to pay the taxes or to cause them to  
12 be paid. Further, based on the substantial amounts deposited in and paid from Nima's bank accounts,  
13 we find that Nima had adequate funds to pay the sales taxes when they became due, but petitioner  
14 elected to pay creditors other than the Board. We therefore find petitioner's failure to pay the taxes or  
15 to cause them to be paid was willful. Accordingly, we find that all conditions have been satisfied for  
16 imposing personal liability on petitioner under section 6829 for the outstanding tax liabilities of Nima.

17 We reject petitioner's contention that the Department's remedies against her pursuant to section  
18 6829 are diminished because of the sale of the business to a successor. The successor may also be  
19 liable for the same debt pursuant to Revenue and Taxation Code section 6812, and the liability will  
20 only be collected once, but that does not eliminate petitioner's liability except to the extent payments  
21 from others are applied to the liability also owed by petitioner. Thus, if any of the \$144,383.87 being  
22 held in escrow for the sale between AAF Business Corporation (Nima's successor) and Phillip Madsen  
23 (AAF's successor) is applied to the liability of AAF for the same debt owed by petitioner, petitioner's  
24 liability will be reduced accordingly.

25 **Issue 3:** Whether adjustments are warranted to the determination issued against Nima and  
26 whether Nima was negligent. We find that no adjustment is warranted, and Nima was negligent.

27 Petitioner contends that the liability established by audit of Nima is overstated and that the  
28 negligence penalty was improperly imposed. Petitioner has provided no evidence that the liability

1 assessed against Nima was excessive, and we recommend no adjustment. Regarding the penalty, the  
2 Department imposed a negligence penalty in the audit of Nima because Nima had failed to provide  
3 adequate books and records.

4 Nima did not provide complete sales records and it failed to maintain documents supporting  
5 claimed deductions. Further, the understatement of reported taxable sales of \$2,804,402 is substantial  
6 and represents 38 percent of reported taxable sales of \$7,360,265. We find that the seriously  
7 incomplete records and the understatement of almost \$3 million are strong evidence of negligence, and  
8 that the penalty was properly applied even though Nima had not been audited previously.

9 **OTHER MATTERS**

10 The liability incurred by Nima and asserted against petitioner includes a finality penalty of  
11 \$21,817.57. Although we advised petitioner that she could file a request for relief of the finality  
12 penalty on Nima's behalf and provided a form she could use, she has not done so. Accordingly, we  
13 have no basis to consider recommending relief of the finality penalty.

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