

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Administrative Protest)
 Under the Sales and Use Tax Law of:)
 SAAD DAWOOD PATTAH) Account Number SR FH 53-003967
 Taxpayer) Case ID 479619
 _____) Escondido, San Diego County

Type of Liability: Responsible person liability

Liability period: 01/01/06 – 07/31/07

<u>Item</u>	<u>Disputed Amount</u>
Responsible person liability	\$227,444 ¹
Tax as determined	\$195,195.38
Interest through 03/31/13	95,538.25
Penalties for late payment of returns	7,457.70
Penalties for late prepayment	2,970.00
Failure-to-file penalties	10,935.50
Finality penalties	<u>10,935.50</u>
Total tax, interest, and penalty	\$323,032.33
Payments	<u>- 6,487.48²</u>
Balance Due	<u>\$316,544.85</u>
Monthly interest beginning 04/01/13	<u>\$ 943.54</u>

A Notice of Appeals Conference was mailed to taxpayer’s address of record, and the notice was not returned by the Post Office. Taxpayer did not respond to the notice or appear at the appeals conference, which was held as scheduled. We thereafter sent taxpayer a letter offering him the opportunity to provide any additional arguments and evidence in writing he wished us to consider, but taxpayer did not respond. This matter was scheduled for Board hearing in July 2012 together with a related appeal for another taxpayer against whom the Sales and Use Tax Department (Department) issued a determination pursuant to Revenue and Taxation Code section 6829, Annand Nadir Sliuman,

¹ The disputed amount is the total of the determined tax and penalties of \$227,494.08, less \$49.78 paid by Fadi Cholagh, another person against whom the Sales and Use Tax Department issued a determination pursuant to Revenue and Taxation Code section 6829. Mr. Cholagh has not protested the determination issued to him.
² Taxpayer has made payments of \$6,437.70 (\$6,487.48 - \$49.78 paid by Mr. Cholagh). Taxpayer has not filed claims for refund of any of the payments, which were the result of enforced collection activity by the Department, and taxpayer has three years from the date of payment to file a timely claim for refund. (Rev. & Tax. Code, § 6902.3.)

1 but neither taxpayer responded to the Notice of Hearing. Accordingly, both matters were scheduled
2 for decision on the Consent calendar, but were removed from that calendar at the request of Board
3 Member Runner. They were rescheduled for decision on the Adjudicatory calendar in September
4 2012, but were postponed at Mr. Sliuman's request that the matters be placed back on the Oral Hearing
5 calendar. This matter was then rescheduled for Board hearing in February 2013, but taxpayer did not
6 respond to the Notice of Hearing. Thus, the matter was again scheduled for decision on the
7 nonappearance calendar. However, it was inadvertently scheduled on the Consent calendar for
8 February 2013, rather than the Adjudicatory calendar.

9 UNRESOLVED ISSUE

10 **Issue 1:** Whether taxpayer is personally liable as a responsible person for the unpaid liabilities
11 of Nadir & Son, Inc. pursuant to Revenue and Taxation Code section 6829. We conclude taxpayer is
12 personally liable.

13 Nadir & Son, Inc. (Nadir) (SR FH 100-527007) operated a Chevron gas station from
14 February 9, 2005, through July 31, 2007. At the time its business terminated, Nadir had unpaid
15 liabilities related to returns and prepayment forms filed with no remittance or partial remittance and
16 three determinations issued by the Department because Nadir failed to file returns.

17 There is apparently no dispute that Nadir's business operations were terminated or that it
18 collected sales tax reimbursement with respect to its taxable sales, which are two of the four conditions
19 for imposing personal liability pursuant to section 6829, since taxpayer notified the Department that
20 Nadir had discontinued its operations, and Nadir claimed deductions for sales tax included on each
21 sales and use tax return it filed. Taxpayer disputes the remaining two conditions, that he is a
22 responsible person and that he willfully failed to pay or to cause to be paid taxes due from Nadir.³

23 Taxpayer signed Nadir's application for a seller's permit as president and signed other
24 documents as the Chief Executive Officer (CEO). Additionally, taxpayer communicated with the
25 Department regarding sales and use tax matters on various occasions.

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27 ³ The D&R notes that Mr. Sliuman also contends the liability established for Nadir is excessive. Although the D&R does
28 not analyze that assertion, we note that neither taxpayer has provided evidence to show that the amounts of tax and penalty
assessed against Nadir were excessive, and we do not address this issue further.

1 Taxpayer contends that he gave up his ownership interest in the corporation in 2005 and was
2 not associated with the corporation during any portion of the liability period. However, we find this
3 contention unpersuasive. The evidence regarding taxpayer, including his signatures on a power of
4 attorney, on a credit application with a supplier, and on a corporate check payment to the landlord,
5 shows that taxpayer had direct involvement in Nadir's sales and use tax matters during the liability
6 period. Also, as noted previously, taxpayer communicated with the Department regarding Nadir's
7 sales and use tax liability on various occasions. Accordingly, we find that taxpayer, in his position as
8 president and CEO, was directly responsible for Nadir's sales and use tax compliance, and that the
9 third requirement for imposition of personal liability pursuant to section 6829 has been met.

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

16 In this case, there is evidence that the Department communicated with taxpayer requesting
17 payment of the amounts due from Nadir. Thus, we find taxpayer knew the tax was due and was not
18 being paid.

19 Willfulness also requires that the responsible person must have been able to pay, or to cause to
20 be paid, the taxes due. We find for the same reasons noted above (i.e., that taxpayer was Nadir's
21 president and CEO) that taxpayer had authority to cause the taxes due to be paid. Regarding whether
22 Nadir had sufficient funds to pay the taxes due, we note that Nadir's practice was to collect sales tax
23 reimbursement, and those amounts collected were available to pay the amount of tax due for the
24 applicable periods. In addition, there is evidence that Nadir paid employee wages, made payments to
25 at least one supplier, and made rent payments to its landlord. Accordingly, we find that Nadir had
26 funds available to pay its tax liability, but taxpayer elected to pay other creditors instead. Thus, we
27 find that taxpayer's failure to pay the tax owed by Nadir was willful. In summary, we conclude that all
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1 conditions have been satisfied for imposing personal liability on taxpayer under section 6829 for the
2 outstanding tax liabilities of Nadir.

3 **OTHER MATTERS**

4 Since taxpayer did not appear at the conference, we did not have an opportunity to discuss
5 relief of penalties with him. However, in our post-conference correspondence, we explained to
6 taxpayer that the penalties at issue could be relieved if the Board concluded that Nadir's failure to
7 timely report and pay the amounts was due to reasonable cause and circumstances beyond its control.
8 We also provided a form to taxpayer that he could use to request relief. Taxpayer did not return the
9 form or otherwise request relief of the penalties. Thus, we have no basis to consider recommending
10 relief of the late-payment, failure-to-file, or finality penalties.

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12 Summary prepared by Lisa Burke, Business Taxes Specialist III

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