

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:)
GURMAIL SINGH) Account Number: SR ARH 53-004928
Petitioner) Case ID 487083
Tracy, San Joaquin County

Type of Liability: Responsible person liability
Liability period: 10/01/06 – 12/31/07

<u>Item</u>	<u>Disputed Amount</u>		
Responsible person liability	\$119,229 ¹		
		<u>Tax</u>	<u>Penalty</u>
As determined:		\$104,047.12	\$21,560.10
Less payments by another individual		- 6,377.81	<u>00.00</u>
Balance, protested		<u>\$ 97,669.31</u>	<u>\$21,560.10</u>
Proposed tax redetermination		\$104,047.12	
Interest through 03/31/12		37,365.18	
Penalty for late payment of a return		781.10	
Penalty for failure to file returns		9,976.80	
Finality penalty		<u>10,802.20</u>	
Total tax, interest, and penalty		\$162,972.40	
Payments		- 6,377.81	
Balance Due		<u>\$156,594.59</u>	
Monthly interest beginning 04/01/12		<u>\$ 569.74</u>	

The Board held a hearing regarding this matter on August 23, 2011, granting petitioner 30 days to provide additional records and the Sales and Use Tax Department (Department) 30 days to respond. Based on petitioner's submissions and the Department's response, we do not recommend adjustments, as discussed below under Post Hearing Developments.

¹ The disputed amount is lower than the amount shown on the D&R or on the Board hearing summary because of subsequent payments made by another individual.

UNRESOLVED ISSUE

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2 **Issue:** Whether petitioner is personally liable as a responsible person pursuant to Revenue and
3 Taxation Code section 6829 for the unpaid liabilities of Pizza Food Enterprises, Inc. We conclude
4 petitioner is personally liable.

5 Pizza Food Enterprises operated pizza restaurants under seller's permit SR ARH 100-810914
6 from August 16, 2006, until December 31, 2007. At the time its business terminated, the corporation
7 had unpaid liabilities related to late payment of a return and two Notices of Determination. Petitioner
8 does not dispute that the corporation collected sales tax reimbursement on its retail sales, one of the
9 four conditions for imposing personal liability on petitioner for the tax debts incurred by the
10 corporation. Petitioner does dispute the three remaining conditions for imposing personal liability on
11 him pursuant to section 6829. He contends that the business did not terminate because it was
12 purchased by another person, he was not a responsible person for the corporation's tax compliance
13 since he was merely the operations manager and not an owner, and he did not willfully fail to pay or to
14 cause to be paid the taxes owed by the corporation.

15 Regarding termination of the business, the question at issue is whether the *corporation* ceased
16 the subject business operations. We find the corporation ceased its business activities on or about
17 December 31, 2007, when the seller's permit was closed.

18 Regarding the issue of whether petitioner was a responsible person, petitioner was listed as the
19 chief executive officer, secretary, or president of the corporation on various documents; he signed two
20 sales and use tax returns as either the owner or president; he listed the Board of Equalization as a
21 creditor as part of his Chapter 7 bankruptcy; and he was identified as a responsible person in an
22 employee questionnaire. Petitioner states that he was not an owner of the corporation, and that two
23 other individuals, Kulsharan Kaur and Randeep Singh Dhillon, were responsible for the corporation's
24 sales and use tax compliance. Also, he states that he listed the Board as a creditor as part of his
25 bankruptcy only because his counsel advised him to do so. Moreover, petitioner alleges he was not
26 employed by the corporation after December 2007, and therefore was not responsible for any amounts
27 due for the fourth quarter 2007. Further, petitioner states that the corporation's business banking
28 accounts were located at San Joaquin Bank, and he had the signatory authority on six of the

1 corporation's business bank accounts at that bank, five of which were closed on August 22, 2007, and
2 one of which was closed January 4, 2008.

3 Petitioner admits he was employed by the corporation from August 2006 through some date in
4 December 2007, and he has provided no evidence that his employment by the corporation ended in
5 2007. Also, since the evidence consistently indicates that Mission Bank was the bank through which
6 the corporation transacted business, we do not find the closure of corporate bank accounts at San
7 Joaquin Bank to be persuasive evidence of limitation of petitioner's authority. His positions and the
8 documents he signed on behalf of the corporation indicate he was responsible for sales and use tax
9 compliance. We note in this regard that more than one person can be held liable pursuant to section
10 6829 for the same corporate liability, and a finding that one person was responsible does not mean that
11 another person was not also responsible.² Based on the evidence, we find that petitioner was a
12 responsible person within the meaning of section 6829.

13 With respect to willfulness, personal liability can be imposed on a responsible person under
14 section 6829 only if that person willfully failed to pay or to cause to be paid taxes due from the
15 corporation, which means that the failure was the result of an intentional, conscious, and voluntary
16 course of action (even if without a bad purpose or evil motive). A person is regarded as having
17 willfully failed to pay taxes, or to cause them to be paid, where he or she had knowledge that the taxes
18 were not being paid and had the authority and ability to pay taxes or to cause them to be paid, but
19 failed to do so. We find unpersuasive petitioner's claim he had no knowledge of the corporation's
20 sales and use tax liability. Based on his signature on returns and his status as president and CEO, we
21 find petitioner must have been aware of the liabilities, and he has provided no substantive argument to
22 the contrary.

23 As president and CEO, we find petitioner had authority to cause the taxes due to be paid, and
24 we conclude he had the ability to pay from available funds since, during the applicable periods, the
25 corporation was making substantial sales, as evidenced by its reported gross receipts, and it made rent
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28 ² The Department issued a determination pursuant to section 6829 against Mr. Dhillon for the same liability, and that determination is now final since Mr. Dhillon did not file a timely petition.

1 payments and payments to vendors and suppliers during the period at issue. Regarding the decision by
2 the corporation's management to pay other creditors instead of the corporation's tax liability, petitioner
3 has acknowledged that he had the authority to pay the corporation's day-to-day expenses, but asserts
4 that Mr. Dhillon made all decisions regarding payments to government al agencies. However,
5 petitioner has not provided documentation that his control over the financial affairs of the corporation
6 was restricted in that manner. Accordingly, we find that petitioner willfully failed to pay the taxes or
7 to cause them to be paid, and that all conditions for imposing personal liability on petitioner under
8 section 6829 for the outstanding tax liabilities of the corporation have been satisfied.

9 **OTHER MATTERS**

10 Although we explained to petitioner that he could request relief, on behalf of the corporation, of
11 the late-payment, failure-to-file, and finality penalties, he has not filed a request for relief. Thus, we
12 have no basis to consider recommending relief of the penalties.

13 **POST-HEARING DEVELOPMENTS**

14 At the Board hearing, petitioner stated he could provide evidence that he was removed from
15 management of the corporation sometime in December 2007. After the hearing, he provided: 1) an
16 email from the telephone/cable company in Bakersfield, which noted that a request for termination of
17 service was made on December 20, 2007 (but also stated that, since the equipment was not returned,
18 services were continued until January 22, 2008, when they were terminated for non-payment), 2) a
19 letter from the landlord for an accounting office petitioner maintained in Bakersfield, indicating that
20 the last month petitioner paid rent was November 2007, and 2) a summary of charges from Pacific Gas
21 and Electric (PG&E) for petitioner's residence in Bakersfield, including invoices, indicating a dramatic
22 drop in electricity usage for the period December 12, 2007, through January 9, 2008, and a moderate
23 increase in the two subsequent service periods. The Department noted that the residential PG&E
24 service continued until August 2008, and all available statements for that service are in the name of
25 Sachreet Singh, petitioner's deceased wife. The Department also observed that, on his bankruptcy
26 filing on February 19, 2008, petitioner listed the Bakersfield address as his residence, and the address
27 for the bankruptcy attorney was in Fresno. Accordingly, the Department concluded that the
28 documentation does not conclusively prove that petitioner moved to a location outside California prior

1 to the end of the fourth quarter 2007. We concur with that finding and note that petitioner also has not
2 provided persuasive evidence that his position with the corporation changed in December 2007.
3 Accordingly, we find petitioner has not documented that he should not be held liable for the amounts
4 due for the fourth quarter 2007, which became due on January 31, 2008.

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