

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matters of the Administrative Protests)
 4 Under the Sales and Use Tax Law of:)
 5 ANNAND NADIR SLIUMAN) Account Number SR FH 53-003968
 Case ID 475771
 6 SAAD DAWOOD PATTAH) Account Number SR FH 53-003967
 Case ID 479619
 7)
 8 Taxpayers) Spring Valley, San Diego County
 Escondido, San Diego County

9 Type of Liability: Responsible person liability

10 Liability period: 01/01/06 – 07/31/07

<u>Item</u>	<u>Disputed Amount</u>
12 Responsible person liability	\$227,444 ¹
13 Tax as determined	\$195,195.38
14 Interest through 09/30/12	89,878.09
15 Penalties for late payment of returns	7,457.70
16 Penalties for late prepayment	2,970.00
17 Failure-to-file penalties	10,935.50
18 Finality penalties	<u>10,935.50</u>
Total tax, interest, and penalty	\$317,372.17
19 Payments	<u>- 6,271.66²</u>
Balance Due	<u>\$311,100.51</u>
Monthly interest beginning 10/01/12	<u>\$ 944.62</u>

20 Notices of Appeals Conference were mailed to taxpayers' addresses of record, and the notices
 21 were not returned by the Post Office. Neither taxpayer responded to the notice or appeared at the
 22 appeals conference, which was held as scheduled. We thereafter sent each taxpayer a letter offering
 23 him the opportunity to provide any additional arguments and evidence in writing he wished us to

24 _____

25 ¹ The liabilities are identical, and the disputed amounts for each taxpayer are the total of the determined tax and penalties of
 26 \$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.

27 ² Mr. Pattah has made payments of \$6,221.88 (\$6,271.66 - \$49.78 paid by Mr. Cholagh). Mr. Sliuman has made no
 28 payments toward the liability. Mr. Pattah 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 consider, but neither responded. These matters were scheduled for Board hearing in July 2012, but
2 neither taxpayer responded to the Notice of Hearing. Accordingly, the matters were scheduled for
3 decision on the Consent calendar, but were removed from that calendar at the request of
4 Member Runner.

5 **UNRESOLVED ISSUE**

6 **Issue 1:** Whether taxpayers are personally liable as responsible persons for the unpaid
7 liabilities of Nadir & Son, Inc. pursuant to Revenue and Taxation Code section 6829. We conclude
8 taxpayers are personally liable.

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

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

20 Mr. Sliuman signed Nadir's application for a seller's permit as vice-president and signed other
21 documents as the corporation's Chief Financial Officer (CFO). Mr. Pattah signed Nadir's application
22 for a seller's permit as president and signed other documents as the Chief Executive Officer (CEO).
23 Both taxpayers communicated with the Department regarding sales and use tax matters on various
24 occasions.

25
26
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 Mr. Sliuman contends that he was an absentee owner who had no responsibilities related to
2 Nadir's sales and use tax compliance. Mr. Pattah contends that he gave up his ownership interest in
3 the corporation in 2005 and was not associated with the corporation during any portion of the liability
4 period. However, we find those contentions unpersuasive. The available evidence, including a
5 personal promissory note Mr. Sliuman signed on behalf of the corporation and his signature on a
6 corporate check payment to the landlord, reveals that Mr. Sliuman was an active owner. We find there
7 is no evidence to support his assertion that he was an absentee owner. Similarly, the evidence
8 regarding Mr. Pattah, including his signatures on a power of attorney, on a credit application with a
9 supplier, and on a corporate check payment to the landlord, shows that Mr. Pattah also had direct
10 involvement in Nadir's sales and use tax matters during the liability period. Also, as noted previously,
11 both taxpayers communicated with the Department regarding Nadir's sales and use tax liability on
12 various occasions. Accordingly, we find that both taxpayers, in their positions as president and vice
13 president, CFO and CEO, were directly responsible for Nadir's sales and use tax compliance, and that
14 the third requirement for imposition of personal liability pursuant to section 6829 has been met.

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

21 In general, the president and CEO and vice-president and CFO of a corporation of this type
22 would have knowledge of the corporation's sales and use tax liability. Further, in this case, there is
23 evidence that the Department communicated with each taxpayer requesting payment of the amounts
24 due from Nadir. Thus, we find both taxpayers knew the tax was due and was not being paid.

25 Willfulness also requires that the responsible person must have been able to pay, or to cause to
26 be paid, the taxes due. We find for the same reasons noted above that both taxpayers had authority to
27 cause the taxes due to be paid. Regarding whether Nadir had sufficient funds to pay the taxes due, we
28 note that Nadir's practice was to collect sales tax reimbursement, and those amounts collected were

1 available to pay the amount of tax due for the during the applicable periods. In addition, there is
2 evidence that Nadir paid employee wages, made payments to at least one supplier, and made rent
3 payments to its landlord. Accordingly, we find that Nadir had funds available to pay its tax liability,
4 but taxpayers elected to pay other creditors instead. Thus, we find that taxpayers' failure to pay the tax
5 owed by Nadir was willful. In summary, we conclude that all conditions have been satisfied for
6 imposing personal liability on taxpayers under section 6829 for the outstanding tax liabilities of Nadir.

7 **OTHER MATTERS**

8 Since neither taxpayer appeared at the conference, we did not have an opportunity to discuss
9 relief of penalties with them. However, in our post-conference correspondence, we explained to each
10 taxpayer that the penalties at issue could be relieved if the Board concluded that Nadir's failure to
11 timely report and pay the amounts was due to reasonable cause and circumstances beyond its control.
12 We also provided a form to each taxpayer that he could use to request relief. Neither taxpayer returned
13 the form or otherwise requested relief of the penalties. Thus, we have no basis to consider
14 recommending relief of the late-payment, failure-to-file, or finality penalties.

15
16 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III
17
18
19
20
21
22
23
24
25
26
27
28