

UNRESOLVED ISSUES

1
2 **Issue 1:** Whether petitioner should be relieved of the interest that accrued from May 21, 2001,
3 to June 12, 2006, on Jensen & Almond's tax liability for the period January 1, 1999, to January 31,
4 1999. We conclude that petitioner is not entitled to relief.

5 Under Revenue and Taxation Code section 6593.5, subdivision (a)(1), a person may be relieved
6 of all or part of the interest imposed on that person where the failure to pay tax was due in whole or in
7 part to an unreasonable error or delay by an employee of the Board acting in his or her official
8 capacity. Subdivision (d) of section 6593.5 limits such relief to interest imposed on tax liabilities that
9 arose during taxable periods commencing on or after July 1, 1999.

10 Prior to the Department's issuance of the NOD to petitioner, he had submitted a request for
11 relief of interest and penalties on behalf of Jensen & Almond for the entire liability period (January 1,
12 1999, through December 31, 2000) pursuant to section 6593.5. Petitioner argued that he was told on
13 May 21, 2001, that the Board would seek payment from Mr. Gary Almond,² a corporate officer of
14 Jensen and Almond, and that notices regarding Jensen & Almond's outstanding liabilities had been
15 sent to Jensen & Almond between May 21, 2001, and June 12, 2006, to 4223 Pacific Avenue, PMB
16 182, Stockton, California 95207-7607 (an address allegedly unknown to petitioner), but the Board did
17 not contact petitioner again until June 12, 2006.

18 The Department concluded that relief under section 6593.5 was warranted with respect to the
19 interest that had accrued on Jensen & Almond's tax liabilities from May 21, 2001, through June 12,
20 2006, for 3Q99 (\$2,583.71 in interest) and 4Q00 (\$1,346.42 in interest). Accordingly, the NOD issued
21 thereafter to petitioner did not include this portion of the interest that had been relieved. However, the
22 Department did not grant relief of interest on the tax liabilities for the period January 1, 1999, through
23 January 31, 1999, because such relief is barred by section 6593.5, subdivision (d) (no relief of interest
24 accrued on taxes for periods prior to July 1, 1999). The Department found that none of the remaining
25 interest was accrued during the period May 21, 2001, through June 12, 2006, because all such taxes
26

27
28 ² The Department also issued an NOD under section 6829 to Mr. Gary Glen Almond (SR KH 97-860452) on June 14, 2007,
for the same unpaid liabilities of Jensen & Almond at issue herein. Mr. Almond did not petition the determination issued to
him and it therefore became final on July 13, 2007.

1 had been paid prior to May 21, 2001. Thus, the only interest in dispute is the interest that accrued from
2 May 21, 2001, to June 12, 2006, on Jensen & Almond's then-unpaid tax liability for the period January
3 1, 1999, through January 31, 1999, which amounts to \$2,610.58. Since this interest accrued on
4 liabilities that arose prior to July 1, 1999, we find that the explicit provisions of section 6593.5,
5 subdivision (d), preclude any relief, and we thus recommend that relief be denied.

6 **Issue 2:** Whether petitioner has established reasonable cause to relieve the late-payment, late-
7 prepayment, failure-to-file, finality, and EFT penalties originally assessed against Jensen & Almond.
8 We conclude that petitioner has failed to establish reasonable cause to relieve the penalties.

9 There is no statutory or regulatory authority for relieving these penalties as to petitioner.
10 However, where a penalty incurred by a corporation and billed to a responsible person pursuant to
11 section 6829 is relieved as to the corporation, relief of the penalty inures to the benefit of the person
12 liable under section 6829. A person seeking relief of these penalties must submit a statement under
13 penalty of perjury setting forth the facts on which the claim for relief is based. (Rev. & Tax. Code, §
14 6592, subd. (b).) Here, petitioner has submitted a declaration signed under penalty of perjury
15 requesting relief of the foregoing penalties making the same arguments in support of relief from the
16 interest as addressed above in Issue 1.

17 We find nothing in the present record that indicates Jensen & Almond's failure to timely file or
18 pay, or pay electronically, was due to reasonable cause and circumstances beyond its control. In fact,
19 petitioner's request for relief provides no explanation for Jensen & Almond's failures to timely file or
20 pay, or pay electronically, since the request for relief addresses only the reasons why petitioner (not
21 Jensen & Almond) failed to timely pay the tax, interest, and penalties between May 21, 2001, and
22 June 12, 2006, after the above-referenced penalties had already been incurred by Jensen & Almond.
23 Therefore, we recommend no relief of the penalties passed through to petitioner.

24 **RESOLVED ISSUE**

25 The Department granted the request for relief of Jensen & Almond's amnesty-interest penalties
26 of \$3,733.92, and this penalty has therefore been removed from petitioner's liability as well.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OTHER DEVELOPMENTS

None.

Summary prepared by Rey Obligation, Business Taxes Specialist III.