

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matter of the Petitions for )  
 Reconsideration of Successor Liability )  
 Under the Sales and Use Tax Law of: )  
 ROBERT JOSEPH BACHAND, dba ) Account Number: SR AS 100-469249  
 Bob's Automotive Service & Repair ) Case ID's 361960, 395866<sup>1</sup>  
 Petitioner )  
 Lomita, Los Angeles County

Type of Business: Auto repair and service

Transaction date: 9/30/04

<u>Item</u>	<u>Disputed Tax</u>
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Successor's Liability	\$3,300
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	<u>Tax</u>	<u>Penalty</u>
As determined:	\$3,300.00	\$330.00
Adjustment - Appeals Division	<u>00.00</u>	<u>-330.00</u>
Proposed redetermination, protested	<u>\$3,300.00</u>	<u>\$ 00.00</u>
Proposed tax redetermination	\$3,300.00	
Interest through 2/28/09	<u>1,332.14</u>	
Total tax and interest	\$4,632.14	
Payments	<u>85.20</u>	
Balance Due	<u>\$4,546.94</u>	
Monthly interest beginning 3/1/09	<u>\$ 21.43</u>	

This matter was previously scheduled for Board hearing on September 17, 2008, but petitioner requested a hearing in Culver City. It was rescheduled for Board hearing on October 28, 2008, but was postponed for settlement consideration. The matter was then rescheduled for hearing on January 21, 2009, but was again rescheduled to a Board hearing in Culver City.

<sup>1</sup> For the same reasons explained below with respect to Case ID 395866, the D&R finds that for Case ID 391960, petitioner was liable as a successor (and also recommends a reduction in the assessment as recommended by the Sales and Use Tax Department). However, a Notice of Determination for the same liability covered by Case ID 361960 was issued to Mr. Elias Gonzalez, the president of the predecessor, under Revenue and Taxation Code section 6829. Mr. Gonzales has now paid that liability in full, and there is no liability remaining under Case ID 361960 that is owed by petitioner. The figures in the table below are for the liability asserted under Case ID 395866.

**UNRESOLVED ISSUES**

**Issue 1:** Whether petitioner is liable as a successor. We find that he is.

In October 2004, petitioner purchased the business of Flying Rubber, Inc., doing business as West Coast Tires and Wheels (West Coast) who held seller's permit number SR AS 100-286799. The Sales and Use Tax Department (Department) found that petitioner was liable as a successor for the unpaid liabilities of West Coast. The determination at issue here was issued to petitioner as the successor liable for the debt incurred by West Coast for its failure to file a final return to report the sale of fixtures and equipment (F&E) for \$40,000. According to the Department, petitioner's representatives stated at a meeting September 21, 2006, that the value of the F&E was \$40,000.

Petitioner contends that he is not a successor to West Coast, and should not be held liable, because 1) he only purchased equipment and stock, not West Coast's business; 2) he was unaware of the tax liability owed by West Coast to the Board; and 3) he purchased the business from an individual, not a corporation. However, the Bill of Sale for the business reflects the sale of West Coast's entire business, not just its equipment. In addition, after the appeals conference, petitioner submitted a handwritten breakdown of the \$65,000 sales price that included amounts for inventory, goodwill, equipment and sales tax. On the basis of this information, we find that petitioner purchased West Coast's business and stock of goods.

Whether petitioner was aware of the tax liability has no bearing on his liability as a successor. Petitioner did not obtain a receipt or tax clearance from the Board stating that no amounts were due from West Coast, and he did not withhold an amount from the purchase price that was sufficient to cover West Coast's liability. Thus, petitioner is liable as a successor for the liabilities incurred by the predecessor that remain unpaid. (Rev. & Tax. Code, § 6811, et seq.) We note that petitioner's breakdown of his purchase price indicates he paid West Coast sales tax reimbursement. Even if he did pay sales tax reimbursement when purchasing the business, the would not override his liability for successor liability, which is imposed because of a purchaser's failure to pay the seller's tax debt to the Board or to withhold sufficient amount from the purchase price to do so.

**Issue 2:** Whether adjustments are warranted to the selling price of the F&E. We recommend no adjustment.

1 To establish the selling price of \$40,000.00 for the F&E, the Department relied on information  
2 provided by petitioner's representatives on September 22, 2006. Petitioner contends that the selling  
3 price is excessive because the equipment was old, West Coast retained the tools, and the true value of  
4 the F&E was \$37,583.24. As support, petitioner provided a handwritten list of the F&E, assigning a  
5 total value of \$40,683.86, from which he deducted sales tax reimbursement included in the purchase  
6 price, to calculate a selling price of \$37,583.24. Petitioner also provided various documents from his  
7 records and from his income tax returns, as detailed in the D&R.

8 We find that petitioner's own records, including the balance sheet dated December 31, 2004,  
9 the 2005 form 4562 Schedule of Depreciation for income tax purposes, and the handwritten list of  
10 equipment prepared by petitioner, show a value of \$40,684.00, which supports a book value of  
11 approximately \$40,000 for the F&E. The value asserted by petitioner is simply the \$40,684 figure, net  
12 of an amount for sales tax included. However, there is no provision for sales tax reimbursement in the  
13 Bill of Sale. Moreover, the representative of the predecessor stated at the appeals conference that sales  
14 tax reimbursement was not included in the selling price of the F&E. Accordingly, we find that the  
15 selling price of the F&E was \$40,000, and we recommend no adjustment.

#### 16 **RESOLVED ISSUE**

17 The D&R recommends relief of the penalty imposed on West Coast for its failure to timely pay  
18 the determination issued to it for this liability based on petitioner's declaration, under penalty of  
19 perjury, that he did not have any relationship (common ownership) with West Coast. For the same  
20 reason, the D&R also recommends that petitioner be relieved of the penalties imposed on West Coast  
21 that were included in the liability covered by Case ID 361960. As noted in the footnote above, there is  
22 no remaining issue in Case ID 361960 because the liability has been paid (by another person) in full.

#### 23 **OTHER DEVELOPMENTS**

24 None.

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