

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petitions for)
 4 Reconsideration of Successor Liability)
 4 Under the Sales and Use Tax Law of:)
 5)
 5 ROBERT JOSEPH BACHAND, dba) Account Number: SR AS 100-469249
 6 Bob's Automotive Service & Repair) Case ID's 361960, 395866
 6)
 7 Petitioner) Lomita, Los Angeles County

8 Type of Business: Auto repair and service

9 Transaction date: 9/30/04 (395866)

10 Audit period 3/1/04 – 9/30/04 (361960)¹

11 <u>Item</u>	<u>Disputed Tax</u>			
12 Successor's Liability	\$3,300			
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalties</u>
13 As determined:	\$3,300.00	\$330.00	\$20,996.00	\$3,766.10
14 Adjustment - Department			-11,378.00	-2,275.60
15 Appeals Division	<u>00.00</u>	<u>-330.00</u>		<u>-1,490.50</u>
16 Proposed redetermination	\$3,300.00	\$ 0.00	\$ 9,618.00	\$ 0.00
17 Amount concurred in			<u>- 9,618.00</u>	
17 Protested	<u>\$3,300.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>
18 Proposed tax redetermination	\$3,300.00		\$ 9,618.00	
18 Interest (tax paid in full 6/27/08)			<u>2,536.25</u>	
19 Interest through 4/30/09	<u>1,375.00</u>			
19 Total tax, interest, and penalties	\$4,675.00		\$12,154.25	
20 Payments	- 85.20		<u>-12,154.25</u>	
20 Balance Due	<u>\$4,589.80</u>		<u>\$ 0.00</u>	
21 Monthly interest beginning 5/1/09	<u>\$ 21.43</u>			

22 This matter was previously scheduled for Board hearing on September 17, 2008, but petitioner
 23 requested a hearing in Culver City. It was rescheduled for Board hearing on October 28, 2008, but was
 24 _____

25 ¹ For the same reasons explained below with respect to Case ID 395866, the D&R finds that for Case ID 361960, petitioner
 26 is liable as a successor. The Department also issued a Notice of Determination for this same liability to Elias Gonzalez, the
 27 president of Flying Rubber, Inc. (the primary taxpayer), pursuant to Revenue and Taxation Code section 6829. In response,
 28 Mr. Gonzalez filed returns for Flying Rubber for the audit period. The Department accepted the returns as filed, and
 adjusted the liability in Mr. Gonzales' matter and as to petitioner in Case ID 361960 accordingly. Mr. Gonzales has paid all
 the amounts due under his determination as adjusted, which means that there is no remaining liability due in Case ID
 361960. However, a determination was issued and petitioned, and a redetermination is required. We recommend that Case
 ID 361960 be redetermined as adjusted by the Department, except with the additional relief of penalty discussed below.

1 postponed for settlement consideration. The matter was then rescheduled for hearing on January 21,
2 2009 (apparently overlooking that this was a Sacramento meeting) and was again rescheduled to a
3 Board hearing in Culver City on February 26, 2009. The matter was then postponed because
4 petitioner's representative was ill and could not attend.

5 UNRESOLVED ISSUES

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

7 In October 2004, petitioner purchased the business of Flying Rubber, Inc., doing business as
8 West Coast Tires and Wheels (Flying Rubber) who held seller's permit number SR AS 100-286799.
9 The Sales and Use Tax Department (Department) found that petitioner was liable as a successor for the
10 unpaid liabilities of Flying Rubber, incurred for its failure to file a final return to report the sale of
11 fixtures and equipment (F&E) for \$40,000 (i.e., the sale to petitioner). According to the Department,
12 petitioner's representatives stated at a meeting September 21, 2006, that the value of the F&E was
13 \$40,000.

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

22 Whether petitioner was aware of the tax liability has no bearing on his liability as a successor.
23 Petitioner did not obtain a receipt or tax clearance from the Board stating that no amounts were due
24 from Flying Rubber, and he did not withhold an amount from the purchase price that was sufficient to
25 cover Flying Rubber's liability. Thus, petitioner is liable as a successor for the liabilities incurred by
26 the predecessor that remain unpaid. (Rev. & Tax. Code, § 6811, et seq.) We note that petitioner's
27 breakdown of his purchase price indicates he paid Flying Rubber sales tax reimbursement. Even if he
28 did pay sales tax reimbursement when purchasing the business, that would not override his liability for

1 successor liability, which is imposed because of a purchaser's failure to pay the seller's tax debt to the
2 Board or to withhold sufficient amount from the purchase price to do so.

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

5 To establish the selling price of \$40,000.00 for the F&E, the Department relied on information
6 provided by petitioner's representatives on September 21, 2006. Petitioner contends that the selling
7 price is excessive because the equipment was old, Flying Rubber retained the tools, and the true value
8 of the F&E was \$37,583.24. As support, petitioner provided a handwritten list of the F&E, assigning a
9 total value of \$40,683.86, from which he deducted sales tax reimbursement included in the purchase
10 price, to calculate a selling price of \$37,583.24. Petitioner also provided various documents from his
11 records and from his income tax returns, as detailed in the D&R.

12 We find that petitioner's own records, including the balance sheet dated December 31, 2004,
13 the 2005 form 4562 Schedule of Depreciation for income tax purposes, and the handwritten list of
14 equipment prepared by petitioner, show a value of \$40,684.00, which supports a book value of
15 approximately \$40,000 for the F&E. The value asserted by petitioner is simply the \$40,684 figure, net
16 of an amount for sales tax included. However, there is no provision for sales tax reimbursement in the
17 Bill of Sale, and the representative of the predecessor stated at the appeals conference that sales tax
18 reimbursement was not included in the selling price of the F&E. We find that the Department's
19 determination based on a selling price of \$40,000 was reasonable (e.g., it could have been based on a
20 selling price of \$40,683.86), and we recommend no adjustment.

21 **RESOLVED ISSUE**

22 The D&R recommends that petitioner be relieved of the penalty imposed on Flying Rubber for
23 its failure to timely pay the determination issued to it for this liability based on petitioner's declaration,
24 under penalty of perjury, that he did not have any relationship (common ownership) with Flying
25 Rubber. For the same reason, the D&R also recommends that petitioner be relieved of the penalties
26 imposed on Flying Rubber that were included in the liability covered by Case ID 361960.

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OTHER DEVELOPMENTS

None.

Summary prepared by Reynaldo D. Obligacion, Business Taxes Specialist III