

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

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
BRUCE ARTHUR SCHOEN ) Account Number: SR CH 53-003253  
Case ID 421602  
Petitioner ) Antioch, Contra Costa County

Type of Liability: Responsible person liability  
Liability period: 01/01/06 – 06/30/06

<u>Item</u>	<u>Disputed Amount</u>		
Responsible person liability	\$38,495		
		<u>Tax</u>	<u>Penalty</u>
As determined and protested:		<u>\$34,841.65</u>	<u>\$3,653.00</u>
Proposed tax redetermination		\$34,841.65	
Interest through 11/30/09		11,935.83	
Late payment penalties		<u>3,653.00</u>	
Total tax, interest, and penalty		<u>\$50,430.48</u>	
Monthly interest beginning 12/01/09		<u>\$ 232.41</u>	

**UNRESOLVED ISSUES**

**Issue 1:** Whether petitioner is personally liable as a responsible person for the unpaid liability incurred by Ultimate Floors, Inc. (UFI) (SR CH 100-294577). We find that he is.

UFI was a retailer of flooring materials from November 15, 2003, through June 30, 2006, when it discontinued business. UFI filed non-remittance sales and use tax returns for the first two quarters of 2006, and since the amounts were not timely paid, late payment penalties were imposed. The Sales and Use Tax Department (Department) found that petitioner was a responsible person under Revenue and Taxation Code section 6829 and was therefore personally liable for the corporation's unpaid tax liability.

Petitioner concedes that he was the president of UFI and that he was a responsible person under section 6829, and does not dispute that he is personally liable for UFI's unpaid tax, interest, and

1 penalties. Petitioner asserts, however, that Mr. Jeffery McCrary, co-owner of UFI, should also be held  
2 liable as a responsible person.

3 As explained in the Decision and Recommendation, the available evidence confirms  
4 petitioner's concession that he is a responsible person liable for the tax debts of UFI pursuant to  
5 Revenue and Taxation Code section 6829. Regarding petitioner's contention that Mr. McCrary is also  
6 a responsible person and should be held personally liable for UFI's unpaid sales and use tax liability,  
7 petitioner submitted additional documentation after the appeals conference, including copies of the  
8 articles of incorporation, bylaws, meeting minutes and stock certificates. The Department reviewed  
9 that documentation and found that, although Mr. McCrary is identified as a director, vice president,  
10 secretary, and shareholder, the available evidence does not show that he signed sales and use tax  
11 returns, communicated with the Board on sales and use tax matters, or had responsibility for sales and  
12 use tax matters on behalf of UFI. Accordingly, the Department found that there is no basis to hold  
13 Mr. McCrary personally liable under section 6829 for UFI's liability.

14 In our review of the documents submitted, we found no direct evidence that Mr. McCrary was  
15 responsible for UFI's compliance with the Sales and Use Tax Law. Further, the issue in this case is  
16 whether petitioner is liable as a responsible person for UFI's unpaid taxes, in accordance with  
17 section 6829. The issue is not whether another individual may also be a responsible person or even a  
18 "more responsible" person. Under section 6829, more than one person may be held liable for the same  
19 primary liability, as long as the requirements for imposing such liability on each person are satisfied.  
20 Of course, the liability will only be collected once regardless of how many persons are found to be  
21 liable. Here, petitioner does not dispute, and the evidence clearly establishes, that petitioner is  
22 personally liable for the unpaid liability incurred by UFI.

23 **Issue 2:** Whether petitioner has established reasonable cause sufficient to relieve the late-  
24 payment penalties assessed against the corporation. We conclude that he has not.

25 UFI's unpaid liabilities assessed to petitioner include two late-payment penalties of \$1,820 for  
26 the first quarter 2006 and \$1,833 for the second quarter 2006. There is no statutory or regulatory  
27 authority for relieving penalties in section 6829 determinations, but if a penalty is relieved pursuant to  
28 Revenue and Taxation Code section 6592 as to the corporation, that relief will also inure to the benefit

1 of a person being held liable under section 6829 for the tax liabilities of the corporation. Petitioner  
2 submitted a statement under penalty of perjury requesting relief of the penalties assessed against the  
3 corporation on the basis that UFI's failure to pay its sales and use tax liability was the result of  
4 unexpected strains on its cash flow, along with its obligation to employees to remain open. We find  
5 that UFI's declining business does not establish reasonable cause for its failure to pay the sales tax due.  
6 Therefore, we find no basis upon which to recommend relief from the late-payment penalties.

7 **OTHER DEVELOPMENTS**

8 None.

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