

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:)
KEITH TIMOTHY WHITEHEAD) Account Number: SR EH 53-002521
) Case ID 358966
Petitioner) Temecula, Riverside County

Type of Liability: Responsible person liability

Liability Period: 10/01/98 – 12/31/01

<u>Items</u>	<u>Amounts in Dispute</u>	
Responsible person liability	\$ 80,492 ¹	
	<u>Tax</u>	<u>Penalty</u>
As determined	\$135,184.62	\$19,224.86
Adjustment: Sales and Use Tax Department	- 84,368.72	-11,998.24
Appeals Division	<u>+ 22,358.86</u>	<u>+ 90.86</u>
Proposed redetermination, protested ²	<u>\$ 73,174.76</u>	<u>\$ 7,317.48</u>
Proposed tax redetermination	\$ 73,174.76	
Interest to 2/28/09	54,810.58	
Penalty for failure to timely pay determination	<u>7,317.48</u>	
Total tax, interest, and penalty	<u>\$135,302.82</u>	
Monthly interest beginning 3/1/09	<u>\$487.83</u>	

Petitioner failed to appear at the scheduled appeals conference even though the notice of conference was mailed to his address of record and was not returned by the U.S. Postal Service as undeliverable. After the conference, we sent petitioner a letter on February 1, 2008, offering petitioner the opportunity to provide any additional information he wanted us to consider, but petitioner did not respond.

¹ Consisting of tax of \$73,175 and penalty of \$7,317 for failure to timely pay the determination.
² The Department originally recommended that the tax and penalty be reduced to \$50,815.90 and \$7,226.62, respectively, but we found that this was erroneously computed. We had estimated that the tax and penalty should be reduced to \$72,266.23 and \$7,226.62, respectively, but requested the Department to recompute the correct amounts. After we issued our D&R, the Department recomputed the tax and penalty and established that the tax and penalty assessable to petitioner as responsible person are \$73,174.76 and \$7,317.48, respectively.

UNRESOLVED ISSUES

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2 **Issue 1:** Whether petitioner has proven that he is not personally liable as a responsible person
3 for the unpaid liabilities of Exhibit Technology, Inc. (ETI) (SY EH 97-200201) for the period October
4 1, 1998, through December 31, 2001, because ETI did not collect sales tax reimbursement on the
5 transactions at issue. We find that petitioner is personally liable for ETI's unpaid liabilities.

6 ETI, a California corporation, was a manufacturer of exhibit booths and fixtures. ETI held a
7 seller's permit from January 1, 1998, through June 30, 2005 (the effective closeout date for its seller's
8 permit). When ETI ceased business operations on June 30, 2005, it had unpaid liabilities that
9 originated from an audit determination for the period October 1, 1998, through December 31, 2001. A
10 Notice of Determination was issued to ETI on June 13, 2003, which became final on July 14, 2003,
11 after ETI failed to file a petition for redetermination within 30 days.

12 The Department concluded that petitioner was personally liable under Revenue and Taxation
13 Code section 6829 for ETI's unpaid liabilities and issued a Notice of Determination to him for the
14 unpaid liabilities.

15 Four conditions must be satisfied to uphold the liability assessed against petitioner: ETI must
16 have ceased its business operations; ETI must have added or included sales tax reimbursement in its
17 selling price of tangible personal property or consumed tangible personal property without paying the
18 applicable tax to the seller or to the Board; petitioner must have been under a duty to act for ETI to
19 comply with the Sales and Use Tax Law; and petitioner must have willfully failed to pay, or to cause to
20 be paid, the taxes due from ETI. Petitioner does not contest that ETI's business was terminated on
21 June 30, 2005; that he was a responsible person when the taxes at issue became due as defined in
22 section 6829, subdivision (b); and that he willfully failed to pay or cause to be paid taxes due from
23 ETI. However, in his petition, petitioner asserts he is not personally liable for ETI's unpaid liabilities
24 because ETI did not collect sales tax reimbursement with respect to any of those liabilities. Petitioner
25 has not provided any documentation or further evidence or arguments supporting his contention.

26 Here, three items comprise the basis for petitioner's responsible person liability: (1) unreported
27 taxable sales of \$736,658, where ETI recorded more taxable sales than it reported; (2) \$13,672
28 measure on purchases consumed for which no sales or use tax was paid; and (3) posting errors of

1 \$190,824 in measure where taxable sales were erroneously posted as nontaxable sales. The
2 Department noted that petitioner claimed a deduction for sales tax reimbursement on line 9 of its
3 SUTR's and statements in the audit workpapers by the auditor indicate that ETI collected sales tax
4 reimbursement on the taxable sales. With respect to the unreported taxable self consumption, the
5 Department established that ETI consumed tangible personal property and failed to pay the tax to the
6 seller upon the purchase of the property. Petitioner has failed to establish otherwise. Regarding the
7 posting errors, the Department's audit identified 17 transactions in which an amount was charged as
8 tax on the invoices and the customers paid the full amount of the invoice.

9 We find that the Department has established that sales tax reimbursement was collected on the
10 disputed sales tax transactions, and that ETI failed to pay the applicable use tax on its use of tangible
11 personal property purchased without payment of tax. Thus, all requirements of section 6829 have been
12 met, and accordingly, we conclude that petitioner is a responsible person liable for the unpaid
13 liabilities of ETI for the period in issue.

14 **Issue 2:** Whether petitioner has established reasonable cause for relief of the finality penalty.
15 We recommend that relief of the finality penalty be denied.

16 There is no statutory or regulatory authority for relieving this penalty in section 6829
17 determinations, but under Revenue and Taxation Code section 6592, this penalty may be relieved as to
18 ETI (which would inure also to petitioner's benefit) if the Board finds that ETI's failure to timely pay
19 was due to reasonable cause and circumstances beyond its control and occurred notwithstanding the
20 exercise of ordinary care and in the absence of willful neglect. We sent petitioner a letter explaining
21 this and provided petitioner a form he could use to request relief of this penalty on ETI's behalf.
22 Petitioner did not respond, and we therefore have no basis to consider recommending relief.

23 AMNESTY

24 ETI timely applied for amnesty entered into an installment payment agreement; therefore, the
25 amnesty-interest penalty does not apply. (Rev. & Tax. Code, § 7074, subd. (a).) The finality penalty
26 was asserted against ETI on July 14, 2003, which was prior to the amnesty period; therefore, the
27 double amnesty-finality penalty does not apply. (Rev. & Tax. Code, § 7073, subd. (c).) However, ETI
28 did not fully comply with the terms of the installment agreement and pay the liability in full on or

1 before June 30, 2006; therefore, the waiver of the finality penalty does not apply. (Rev. & Tax. Code,
2 § 7073, subd. (b).)

3 **OTHER DEVELOPMENTS**

4 None.

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6 Summary prepared by Rey Obligacion, Business Taxes Specialist III.
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