

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 AHMED BAHMAN LARI) Account Number: SR ARH 53-002334
 6) Case ID 406718
 7 Petitioner) Fresno, Fresno County

8 Type of Liability: Responsible person liability

9 Periods of Liability: 1/1/01 – 6/30/01

10 Item Disputed Amount

11 Responsible person liability \$50,779

	<u>Tax</u>	<u>Penalties</u>
12		
13 As determined	\$19,693.00	\$34,557.03
14 Adjustment – Appeals Division	<u>0.00</u>	<u>- 3,470.95</u>
14 Protested	<u>\$19,693.00</u>	<u>\$31,086.08</u>
15 Proposed tax redetermination	\$19,693.00	
16 Interest through 5/31/09	25,075.12	
16 Penalty for late payment	<u>31,086.08</u>	
17 Total tax, interest, and penalty	<u>\$75,854.20</u>	

18 Monthly interest beginning 6/1/09 \$131.29

19 UNRESOLVED ISSUES

20 **Issue 1:** Whether petitioner is liable as a responsible person under Revenue and Taxation Code
 21 section 6829 for Auto Mart's unpaid liabilities. We conclude petitioner is personally liable.

22 Petitioner was a corporate officer of Auto Mart U.S.A. (Auto Mart), seller's permit number SY
 23 KHO 97-646960. The liability at issue is based on Auto Mart's self-reported liabilities on partial
 24 remittance sales and use tax returns. Auto Mart's business was terminated on August 27, 2002, when
 25 petitioner filed for bankruptcy on behalf of Auto Mart. The Sales and Use Tax Department
 26 determined that petitioner is personally responsible because he was the president and CEO of Auto
 27 Mart, he was the person responsible for sales and use tax matters, and he willfully failed to pay taxes
 28 due with respect to sales for which Auto Mart collected sales tax reimbursement.

1 Petitioner contends that he was not a responsible person. He asserts that he had no control over
2 the business because he was under probation and sanctioned by the Department of Motor Vehicles and
3 had removed himself from the direct management and control of the retail operations. He asserts he
4 did not regain control until March 2004 when he purchased 49 percent of the outstanding stock of
5 Fresno Auto West, Inc. Petitioner argues that Mr. Danny Sangera was the responsible person during
6 the period at issue and paid all the bills.

7 There is no dispute that two of the requirements for imposing responsible person liability on
8 petitioner under section 6829 have been met: the business has been terminated and it charged and
9 collected sales tax reimbursement on its sales of tangible personal property. The issues here are
10 whether petitioner was a responsible person during the time when the taxes became due, and whether
11 he was aware of the tax liability and willfully failed to pay the taxes due.

12 The evidence shows that petitioner was the president and CEO of the corporation from the
13 inception of Auto Mart to its termination. As president of the corporation, petitioner had broad implied
14 and actual authority to do all acts customary connected with the business. (See *Commercial Sec. Co. v.*
15 *Modesto Drug Co.* (1919) 43 Cal.App. 162, 173.) This includes the duty to ensure that the corporation
16 was in compliance with the Sales and Use Tax Law. We find that petitioner was responsible for Auto
17 Mart's tax compliance during the periods when the liabilities became due, and are not persuaded by
18 petitioner's argument that he relinquished control of the corporation during the liability period. We
19 note that the letter petitioner presented in support of this argument reveals that, in November and
20 December of 2001, petitioner relinquished control of any retail operations in which he had passive
21 interest in. However, petitioner did not have a passive interest in Auto Mart, *and* the time period for
22 which petitioner relinquished control was several months *after* the liability period.

23 The evidence shows that petitioner was aware of the tax liability. Petitioner participated in a
24 vote of the directors to close Auto Mart because sales had decreased and the business was not
25 profitable. Since petitioner had knowledge of the sales volume of Auto Mart, we believe petitioner
26 also must have known of the tax liability associated with the sales of Auto Mart. As the president,
27 petitioner had a duty to be aware of the financial obligations of the corporation and a duty to ensure the
28 corporation's taxes were timely paid. Instead of paying the taxes due, petitioner used the corporation's

1 funds to pay other liabilities. We find that petitioner willfully failed to pay Auto Mart's taxes due, or
2 failed to cause them to be paid for the period at issue, and that petitioner is personally liable for the
3 amounts due.

4 While petitioner argues that Mr. Sangera should be held solely liable for the taxes due, we note
5 that, under section 6829, more than one person may be held liable for the same primary liability, as
6 long as the requirements for imposing such liability on each person are satisfied (the liability will only
7 be collected once irrespective of how many persons are held liable.). Thus, the only legal issue
8 presented is whether petitioner is liable under section 6829, and not whether someone else may be
9 liable. We note that the Sales and Use Tax Department investigated several people involved with Auto
10 Mart but did not find anyone except petitioner who had authority in sales and use tax matters.

11 **Issue 2:** Whether petitioner has established reasonable cause to relieve the late payment
12 penalties assessed against the corporation. We conclude that petitioner has failed to establish
13 reasonable cause.

14 At the appeals conference, we provided petitioner with a form he could use to request relief
15 from the late payment penalties on Auto Mart's behalf. Petitioner has not filed a request for relief of
16 the penalties, and we thus have no basis for considering whether to recommend relief of the penalties.

17 AMNESTY

18 An amnesty interest penalty of \$3,470.95 was imposed against Auto Mart because the tax
19 liability was incurred during amnesty-eligible periods, and Auto Mart failed to apply for amnesty, or
20 pay the tax and interest due, by March 31, 2005. (Rev. & Tax. Code, § 7074, subd. (a).) The amnesty
21 interest penalty was included in the determination issued to petitioner as part of the unpaid liabilities of
22 Auto Mart.

23 The records show that Auto Mart ceased business operations on August 27, 2002, and the
24 amnesty program was not adopted by the Legislature until two years later. By that time, Auto Mart
25 was no longer operating and likely had no assets. Thus, we conclude that the facts are clear that Auto
26 Mart's failure to participate in the amnesty program was due to reasonable cause and circumstances
27 beyond its control. However, we may consider recommending relief of the amnesty interest penalty
28 only when the person seeking relief files a request for relief including a statement of the basis for

