

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

In the Matter of the Petition for )  
Reconsideration of Successor Liability )  
Under the Sales and Use Tax Law of: )  
JEN KUBALA and SHARON STENCIL, dba )  
Ritzy Ragz and Thingz )  
Petitioner )

Account Number: SR Y KH 100-754871  
Case ID 473195  
  
Modesto, Stanislaus County

Type of Business: Consignment shop  
Audit period: 05/09/05 – 03/31/08

<u>Item</u>	<u>Disputed Amount</u>
Successor liability	\$30,000

This matter was previously scheduled for Board hearing on July 15, 2010, but was postponed at petitioner’s request because one partner had been hospitalized for an extended period and needed additional time to prepare.

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner is liable as a successor for the unpaid tax-related liabilities of Lesa Marie Coopersmith (SR GHC 100-566776). We conclude it is.

Lesa Marie Coopersmith operated a consignment store from May 9, 2005, through February 25, 2008. In February 2008, petitioner purchased the business from Ms. Coopersmith for \$30,000.00. At the time of the sale of the business, Ms. Coopersmith had unpaid tax liabilities related to sales and use tax returns that had not been filed and returns that had been filed with no remittance or partial remittance. The Sales and Use Tax Department (Department) concluded that petitioner was liable as a successor for those unpaid liabilities, to the extent of the purchase price of \$30,000.00.

Petitioner contends that it does not meet the definition of successor in Revenue and Taxation Code section 6811 because it did not purchase the business or stock of goods but only purchased certain fixtures and equipment. Petitioner states that the consignment store does not actually maintain an inventory. Instead, the store enters into contractual relationships with consignors, agreeing to display and sell the consignors’ merchandise in exchange for a fee. Thus, petitioner asserts it did not

1 purchase inventory from Ms. Coopersmith. Petitioner also states that most of the fixtures and  
2 equipment contained in the store were not usable, and it was necessary to purchase new equipment. In  
3 addition, petitioner contends that, because it only purchased fixtures and equipment, the transaction  
4 should be classified as an occasional sale under Revenue and Taxation Code section 6367, and, as  
5 such, was exempt from sales tax.

6 The contract for sale of the business expressly transferred ownership, title, and possession of  
7 the consignment store from Ms. Coopersmith to petitioner on February 13, 2008. Petitioner received  
8 everything Ms. Coopersmith had to operate the business in exchange for \$30,000.00. Accordingly, we  
9 find that petitioner did not merely purchase fixtures and equipment, but purchased the business. Since  
10 petitioner failed to obtain a tax clearance from the Board or withhold any portion of the liability from  
11 the purchase price, we find petitioner is liable as a successor. The allegation that the fixtures were not  
12 as valuable as petitioner initially thought, even if true, does not alter this conclusion. Further, we are  
13 not persuaded by petitioner's argument that it did not purchase inventory from Ms. Coopersmith. A  
14 person who has the power to transfer title to property without further action by its owner is the retailer  
15 of property that he or she does not own. According to petitioner, it has the authority to sell the  
16 merchandise consigned to it, and thus the consigned merchandise was inventory, which was transferred  
17 to petitioner as part of its purchase of the business from Ms. Coopersmith. Consequently, none of  
18 petitioner's statements alters our conclusion that petitioner is liable as a successor for the unpaid tax-  
19 related liabilities of Ms. Coopersmith.

20 With regard to the contention that the sale of fixtures and equipment by Ms. Coopersmith was  
21 exempt from tax as an occasional sale, we note that an occasional sale is a sale of tangible personal  
22 property not held or used by the seller in the course of activities for which he or she is required to hold  
23 a seller's permit. (Rev. & Tax. Code § 6006.5, subd (a).) Since it is undisputed that Ms. Coopersmith  
24 used the fixtures and equipment in the consignment business for which she was required to hold a  
25 seller's permit, her sale of that tangible personal property to petitioner was not an occasional sale.

#### 26 **RESOLVED ISSUE**

27 The liabilities owed by the predecessor include penalties. Petitioner filed a statement under  
28 penalty of perjury seeking relief of the penalties because it had no common ownership with the

1 predecessor, and the Department agreed that relief should be granted. We agree, and recommend that  
2 petitioner be relieved of liability for the penalties owed by the predecessor, totaling \$3,042.90.  
3 However, since the predecessor currently owes more than \$30,000 excluding the penalties, this relief  
4 does not serve to reduce petitioner's successor liability.

5 **OTHER DEVELOPMENTS**

6 None.

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