

1 person within the meaning of Revenue and Taxation Code section 6829, subdivision (a), because the
2 four requirements of section 6829 have been satisfied. Petitioner timely petitioned the determination,
3 conceding liability except for his contention that his personal liability is limited based on a criminal
4 plea agreement.

5 Petitioner indicated that the plea agreement resulted from a June 6, 2000, criminal complaint
6 filed against him by the San Diego County Deputy District Attorney that included two counts of filing
7 a false return with intent to evade the determination of amount due with a special circumstance, and
8 two violations of Penal Code section 487, subdivision (a), for grand theft of personal property. Under
9 the plea agreement, petitioner did not admit making false tax returns or intending to evade payment of
10 tax but did admit to knowingly failing to disclose that a car Abbey sold at auction had its odometer
11 “rolled back.” On August 23, 2001, the court ordered petitioner to serve three years of formal
12 probation, among the terms being that he would personally guarantee the payment of the first \$194,500
13 restitution to the Board that was to be paid at \$1,500 a month (or more) starting on October 23, 2001,
14 with the balance of restitution to be assessed against Abbey. The court’s order also allowed the
15 restitution amount to be modified by further court order if the victim reported a further loss, and
16 provided that any restitution order would be enforceable as a civil judgment.

17 Petitioner also stated that a related criminal complaint was filed against Abbey which, under its
18 plea agreement, pleaded guilty to filing a false return with intent to evade the determination of amount
19 due. According to petitioner, Abbey was also placed on probation conditioned on its making a
20 restitution of \$365,037.65, payable at \$1,500 per month. Petitioner stated that he was jointly and
21 severally liable for the restitution amount of \$365,037.65, but his joint and several liability for Abbey’s
22 \$365,037.65 restitution amount was limited to the amount in his plea agreement of \$194,500.

23 Petitioner indicated that he has successfully completed probation, including \$194,500 in restitution
24 payments to the Board. Thus, petitioner argues he is not liable for any unpaid debt of Abbey beyond
25 the \$194,500 which he already paid. Petitioner contends that, under general principles of contract law,
26 he entered into a “global resolution of criminal and civil charges” with the Deputy District Attorney
27 and the Board of Equalization Criminal Investigation Division and, in return, the Board, through its
28 Investigation Division and the Deputy District Attorney as the Board’s representative, agreed to make

1 no alter ego, nominee, responsible person, dual determination, or any other assessment against
2 petitioner for these taxes. Petitioner also argues that he should not be assessed a dual determination as
3 a matter of due process, collateral estoppel, res judicata, and fundamental fairness.

4 The Department asserts it did not agree to waive its rights to issue a dual determination to
5 petitioner and that the criminal court's order petitioner uses to support its position was solely for the
6 corporation, not the petitioner as an individual and notes also that the court stated its jurisdiction did
7 not extend to the civil issues. The Department asserts that collection of a tax obligation from petitioner
8 is not subject to a defense based on agreements entered into between the prosecutor and defendant in a
9 criminal proceeding.

10 We find petitioner's contention regarding the Board's alleged agreement to make no other
11 assessment against petitioner to be without merit. Petitioner bargained his personal guarantee for
12 Abbey's criminal restitution amount in connection with obtaining probation (e.g., instead of jail time),
13 and there is no written settlement agreement with the Board. In short, petitioner has not shown that
14 there is any legal limitation to prevent the Board from collecting the full amount of Abbey's liability
15 from him as a responsible person under section 6829. With respect to the issues of due process and
16 fundamental fairness, under Section 3.5, Article III of the California Constitution, the Board may not
17 decide the constitutionality of the procedural laws under which it operates. In any event, we see
18 nothing in this process that has violated petitioner's due process or is in any way unfair.

19 With respect to collateral estoppel, we find that petitioner's guilty plea in the criminal matter
20 only established that he was guilty of the elements of grand theft under Penal Code section 487 and
21 that, in exchange for his probation terms, petitioner was willing to personally guarantee \$194,500 of
22 Abbey's \$365,037.65 criminal restitution amount. Petitioner's plea did not establish his civil tax
23 liability under any Revenue and Tax Code, let alone section 6829. There was no mention of section
24 6829 in the criminal complaint, petitioner's plea agreement, the probation hearing transcript, or any of
25 the court's orders. We conclude that the assessment of liability to petitioner under section 6829 is not
26 barred by collateral estoppel. With respect to the doctrine of res judicata, this could apply only if the
27 criminal court decided petitioner's civil personal liability limit under section 6829 when it accepted his
28 plea agreement and ordered that petitioner personally guarantee \$194,500 of Abbey's \$365,037.65

1 restitution, and would simply not occur in criminal court where the issue is not the assessment of tax
2 *and* where the Board is not a party. In short, we find that the court in no way limited the Board's
3 authority under law to assess and collect amounts due from petitioner pursuant to section 6829.

4 **OTHER DEVELOPMENTS**

5 None.

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7 Summary prepared by Rey Obligacion, Retired Annuitant
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