

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Claim for Refund Under)
 4 the Sales and Use Tax Law of:)
 5 CARTER JAMES READ) Account Number: SR EH 53-001762
 6) Case ID 382765
 6 Claimant) Covina, Los Angeles County

7 Type of Liability: Responsible Person Liability

8 Claim Period: 10/1/00 – 3/31/01

9 Items Amounts in Dispute10 Claim for refund (tax, interest, and penalties) \$78,240¹

11 UNRESOLVED ISSUES

12 **Issue 1:** Whether claimant is personally responsible for the tax liability incurred by Warlock
 13 for the claim period. We conclude that claimant is liable.

14 Claimant paid the amount of the claim against the liability assessed against him as a
 15 responsible person under Revenue and Taxation Code section 6829 for the unpaid liability of Ultimate
 16 Warlock, Inc. (Warlock) (SR EH 99-399184). Warlock ceased business operations on March 31, 2001,
 17 and had unpaid liabilities consisting of a self-assessed non-remittance return for \$11,255 for the period
 18 October 1, 2000, to December 31, 2000, a compliance assessment of \$47,613.40 for the period of
 19 January 1, 2001, to March 31, 2001, a late payment penalty of \$1,125.41 for the period October 1,
 20 2000, to December 31, 2000; penalties of \$4,896.40 for failure-to-file a return, and \$4,896.40 for
 21 failure to timely pay a determination (finality) for the period January 1, 2001, to March 31, 2001². The
 22 Sales and Use Tax Department (Department) concluded that claimant was responsible for Warlock's
 23 compliance with the Sales and Use Tax Law and was personally liable for Warlock's unpaid liabilities
 24 pursuant to Revenue and Taxation Code section 6829.

25 _____
 26 ¹ Including tax of \$47,613.40 and penalties of \$10,738.15. Claimant actually made payments of \$80,239.71 to fully pay off
 27 the tax, penalties, and accrued interest due under the Notice of Determination issued to him, but has not updated the claim
 for refund.

28 ² Amnesty interest penalty was imposed against Warlock on April 1, 2005, which was after the Notice of Determination
 was issued to claimant, and has not been assessed against claimant.

1 Two of the four conditions required to uphold responsible person liability under section 6829
2 are undisputed: Warlock has ceased business and it had added sales tax reimbursement to, or included
3 tax reimbursement in, the selling price of tangible personal property. The third requirement is that
4 claimant must have been a responsible person, that is, he must have had a duty to act for the
5 corporation in complying with the provisions of the Sales and Use Tax Law. Claimant asserts that he
6 was not a responsible person, pointing out that the California Unemployment Insurance Appeals Board
7 (UIAB) issued a decision on or about April 7, 2005, concluding that he was not responsible for
8 Warlock's employment tax liability under California Unemployment Insurance Code, section 1735.
9 Claimant asserts that this provision is similar to Revenue and Taxation Code section 6829. Claimant
10 also asserts that his boss was Mr. Richard S. Granville, Warlock's chief executive officer and chief
11 financial officer and a 90-percent shareholder, and that Mr. Granville was responsible for the day-to-
12 day operations of the business and its financial affairs, including the sales tax. Claimant contends that
13 he was only responsible for Warlock's manufacturing and marketing operations. Claimant asserts that
14 due to his notoriety in power racing boat circles, he became the president of Warlock to utilize his
15 name and reputation in the sport.

16 Claimant does not dispute that he held the position of president when the taxes became due
17 during the liability period of October 1, 2000, through March 31, 2001, and the evidence clearly shows
18 that claimant was involved in sales and use tax matters on behalf of the corporation. On April 9, 2001,
19 in the course of prior audit of the corporation, claimant exercised responsibility for the corporation's
20 tax compliance by signing a Waiver of Limitation form, and signed corporate checks of \$332.61, dated
21 October 31, 2000, for payment of the penalty for late payment of return for 2Q00, and of \$2,605.60,
22 dated March 20, 2001, in partial payment of the corporate liability for 4Q00. These facts show direct
23 involvement by claimant in sales and use tax matters. Furthermore, as president of the corporation,
24 claimant had broad implied and actual authority to do all acts customarily connected with the business.
25 This would include the duty to ensure that the corporation was in compliance with the Sales and Use
26 Tax Law.

27 We are not persuaded that Mr. Granville had the sole responsibility for Warlock's financial
28 operations, and thus claimant is not a person responsible for the corporation's tax liability. Other than

1 the UIAB decision, claimant has not provided any other evidence to corroborate his contention.
2 Section 6829 does not require that claimant be the exclusive authority or the only person responsible
3 for the corporation's compliance with the Sales and Use Tax Law, only that he be *a* responsible
4 person. Several persons can be responsible for the corporation's compliance with the tax laws under
5 the provisions of section 6829. As president, claimant's responsibility to act on behalf of the
6 corporation is not diminished or extinguished because another person also shares the corporate
7 responsibilities and duties. We also note that claimant, as president, was the only person identified as
8 the corporation's representative by the auditor in the Report of Examination of Records prepared as a
9 result of the prior audit. In fact, the report does not list Mr. Granville in any capacity whatsoever.
10 Because the prior audit was being conducted during the liability period, this evidence supports a
11 finding that claimant was involved with and responsible for sales and use tax compliance during the
12 period at issue. Although the UIAB decision concluded that claimant was not a responsible person for
13 Warlock's employment tax liability, that decision is not binding in regards to claimant's liability as a
14 responsible person under section 6829 and thus not binding on us in this case. Even though the UIAB
15 concluded that claimant was not responsible for Warlock's employment taxes, the information before
16 us confirms that claimant was responsible for sales and use tax compliance. Based on these factors, we
17 conclude that claimant had a duty to act and did act for Warlock in complying with the Sales and Use
18 Tax Law.

19 The fourth requirement is that claimant must have willfully failed to pay or cause to be paid
20 taxes due from Warlock. For purposes of section 6829, willfulness does not imply bad purpose or evil
21 motive. A person is willful for these purposes if he or she knew that tax was not being properly paid
22 and had authority to pay them or cause them to be paid, but did not do so.

23 Claimant contends that he did not knowingly fail to pay the taxes and that he was unaware of
24 Warlock's tax liabilities until a year after the business terminated, but has provided no evidence in
25 support of this contention. The evidence presented indicates that claimant was the officer who was
26 personally involved with and represented the corporation for audit. The evidence also shows that
27 claimant had actual knowledge of the corporation's tax liability and had check-writing authority with
28 the ability to make payment to the Board. Furthermore, during the period at issue, Warlock continued

1 to pay its employees, which is evidence that claimant, as Warlock's president, had the ability to pay the
2 Board, but chose to pay other creditors instead.

3 Consequently, based on the evidence, we find that claimant was a responsible person who
4 willfully failed to pay or cause to be paid the corporation's tax liability and therefore is personally
5 liable for the corporation's unpaid tax, interest, and penalties for the period of October 1, 2000,
6 through March 31, 2001.

7 **Issue 2:** Whether claimant has established that adjustments are warranted to the estimated
8 measure of tax in the compliance assessment performed by the Department. We find no adjustment is
9 warranted.

10 On May 29, 2008, claimant submitted a statement that alleges that the compliance assessment
11 by the Department for the period January 1, 2001, through March 31, 2001, was excessive. Claimant
12 claims that, during this period, Warlock experienced a significant reduction in sales activity. Claimant
13 contends that a significant portion of the bank deposits made during this period represented funds from
14 a group of investors seeking to purchase from Warlock a promissory note to a creditor bank.

15 Warlock made retail sales during the period but failed to file a Sales and Use Tax Return for
16 1Q01. Consequently, the Department had to estimate the measure of tax for 1Q01 using Warlock's
17 self-reported amounts for the most recent return filings (2Q00, 3Q00, and 4Q00). We find that this
18 was the best available information in the Department's possession. Claimant has not provided
19 evidence to support his contention. Therefore, we find that claimant has not submitted any credible
20 evidence to show that the Department's estimated measure of tax for 1Q01 was overstated. Thus, we
21 conclude that no adjustment is warranted.

22 **Issue 3:** Whether claimant has established reasonable cause to relieve the penalties originally
23 assessed against Warlock which claimant paid pursuant to the assessment issued to him. We conclude
24 that claimant has not established reasonable cause for relieving the penalties.

25 There is no statutory or regulatory authority for relief of a finality penalty, a failure-to-file
26 penalty, a failure-to-pay penalty, or amnesty interest penalty, in section 6829 determinations, but
27 Revenue and Taxation Code section 6592, subdivision (a), provides that the penalties may be relieved
28 if the Board finds that a person's failure to petition or pay timely was due to reasonable cause and

