

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
DEAN WOERNER

) OTA Case No. 18012007
) CDTFA Case ID: 866775
) CDTFA Account No. SR BH 53-013512
)
) Date Issued: August 6, 2019

OPINION

Representing the Parties:

For Appellant: Dean Woerner

For Respondent: Mengjun He, Tax Counsel III

For Office of Tax Appeals: Josh Lambert, Tax Counsel

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Dean Woerner (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) ¹ denying appellant’s timely petitions for redetermination of CDTFA’s Notice of Determination (NOD). The NOD, which assessed personal liability against appellant as a responsible person under R&TC section 6829, consisted of a \$27,065 tax liability, plus applicable interest, and penalties of \$4,531.20, for the period October 1, 2011, through March 31, 2012.² The NOD reflects CDTFA’s determination that appellant is personally liable for the unpaid sales and use tax liabilities of Western Plywood, Inc. (Western).

Appellant failed to respond to the hearing notice issued in this matter, and therefore the appeal has been decided on the written record.

¹ Sales taxes were formerly administered by the State Board of Equalization. In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22; Stats. 2017, ch. 16, § 5.) For ease of reference, when referring to acts or events that occurred before July 1, 2017, “CDTFA” shall refer to the board; and when referring to acts or events that occurred on or after July 1, 2017, “CDTFA” shall refer to CDTFA.

² The penalties consist of late-filing penalties of \$2,711.50 for the fourth quarter of 2011 (4Q11) and \$1,819.70 for 1Q12.

ISSUES

1. Whether appellant is personally liable for Western's unpaid sales tax liabilities for the liability period of October 1, 2011, through March 31, 2012.
2. Whether appellant is entitled to relief of the late-filing penalties incurred by Western.
3. Whether relief of interest is warranted.

FACTUAL FINDINGS

1. Western, a California corporation located in San Francisco, California, made retail sales of plywood beginning January 1, 1985. According to a Contract for Sale of Business dated July 17, 2012, Western sold its business to Woodbank, Inc. (Woodbank) for \$331,875, including the business's inventory, furniture, fixtures, equipment, and goodwill, and Western's business operations terminated.
2. For the quarters at issue herein (4Q11 and 1Q12), Western filed untimely sales and use tax returns (SUTR's) with only partial remittance, reporting total taxable sales of \$319,110 and \$214,313, respectively (\$27,115 tax and \$2,712 penalty was reported due for 4Q11, and \$18,197 tax and \$1,820 penalty for 1Q12).
3. CDTFA concluded that appellant was liable for Western's unpaid sales and use tax liabilities under R&TC section 6829, and therefore issued the above-referenced NOD to appellant.
4. Appellant filed a timely petition for redetermination disputing the NOD.
5. Appellant agrees that Western sold tangible personal property in the conduct of its business, collected sales tax reimbursement on the selling price, and failed to remit such tax when due.
6. Western terminated its business operations on July 17, 2012, when Western sold its business to Woodbank.
7. Appellant agrees that he was one of the persons responsible for Western's sales and use tax compliance during the liability period.
8. Appellant also agrees that: he had actual knowledge of Western's unpaid tax liabilities; he had the authority to cause Western to pay them; and Western had funds available to pay the liabilities.

9. CDTFA issued a Decision and Recommendation on June 7, 2017, recommending that appellant be relieved of the interest that accrued on unpaid tax from March 1, 2016, through August 31, 2016, but otherwise denying appellant's petition.
10. This timely appeal followed.

DISCUSSION

1. Whether appellant is personally liable for Western's unpaid sales tax liabilities.

R&TC section 6829 provides that a person is personally liable for the tax, penalties, and interest owed by a corporation if all the following elements are met: (1) the corporation's business has been terminated, dissolved, or abandoned; (2) the corporation collected sales tax reimbursement on its sales of tangible personal property and failed to remit such tax reimbursement to CDTFA; (3) the person had control or supervision of, or was charged with the responsibility for, the filing of returns or the payment of tax, or was under a duty to act for the corporation in complying with the Sales and Use Tax Law; and (4) the person willfully failed to pay taxes due from the corporation or willfully failed to cause such taxes to be paid. (R&TC, § 6829 (a) & (c); Cal. Code Regs., tit. 18, § (Reg.) 1702.5 (a) & (b).) A person is regarded as having willfully failed to pay taxes, or to cause them to be paid, where he or she had knowledge that the taxes were not being paid; had the authority to pay the taxes, or to cause them to be paid; and had the ability to pay the taxes but chose not to do so. (Reg. 1702.5(b)(2)(A) – (C).)

As noted above, appellant has conceded all elements required for R&TC section 6829 liability. On that basis, we find that that all elements required for the imposition of personal liability on appellant for Western's unpaid sales tax liabilities for 4Q11 and 1Q12 have been met in this case. Accordingly, we conclude that appellant is personally liable for Western's unpaid tax liabilities.

Although the foregoing is dispositive of this appeal, for clarity we address appellant's contentions. Appellant asserts that Woodbank should be held liable for Western's unpaid sales and use tax liabilities because Woodbank agreed in the sales contract to assume all liability for the outstanding tax liabilities that Western owed to CDTFA, but failed to pay them. However, any such assumption of liability is a matter of contract between Western and Woodbank, and has no effect upon a taxpayer's tax liability to the state. (*Pacific Coast Eng. Co. v. State of California* (1952) 111 Cal.App.2d 31, 34.) Therefore, Woodbank's assumption of liability did

not affect the statutory liability imposed on appellant by operation of R&TC section 6829, nor did it relieve Western of its liability for its own taxes owed to CDTFA, which became due on January 31, 2012 (for 4Q11), and April 30, 2012 (for 1Q12), well before Western sold its business to Woodbank by contract dated July 17, 2012.

Appellant also asserts that as a result of Woodbank's failures, he cannot afford to pay the liability; however, there is no basis for relieving a liability under R&TC section 6829 because of financial hardship. Based on the foregoing, we conclude that appellant is personally liable for Western's unpaid sales tax liabilities for the liability period of October 1, 2011, through March 31, 2012.

2. Whether appellant is entitled to relief of the late-filing penalties incurred by Western.

There is no statutory or regulatory authority for relieving penalties in R&TC section 6829 determinations, but R&TC section 6592(a) provides that late-filing penalties may be relieved if a person's failure to timely file returns or pay taxes was due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect. (R&TC, § 6592(a).) A person seeking relief of penalties under R&TC section 6592 must submit a statement signed under penalty of perjury setting forth the facts upon which the person bases the request for relief. (R&TC, § 6592(b).)

Appellant provided a signed statement under penalty of perjury stating that Woodbank and its principals defaulted in their contractual promise to pay Western's tax liabilities. However, Western's returns for 4Q11 and 1Q12 were due on January 31, 2012, and April 30, 2012, respectfully, and Woodbank's acts or omissions months later do not explain or excuse Western's failure to timely file its returns. Therefore, appellant has not established reasonable cause to relieve the penalties.

3. Whether relief of interest is warranted.

The imposition of interest is mandatory. (R&TC, § 6482.) The law provides for relief of interest only under very narrow circumstances, such as the occurrence of a disaster or unreasonable error or delay by an employee of CDTFA in his or her official capacity. (R&TC, §§ 6593, 6593.5.) An error or delay will be deemed to have occurred only if no significant aspect of the error or delay was attributable to an act of, or a failure to act by, the taxpayer. (R&TC, § 6593.5(b).) A taxpayer requesting relief of interest under R&TC section 6593.5 must

make a statement in writing, signed under penalty of perjury, setting forth the factual basis for the request for relief. (R&TC, § 6593.5(c).)

Appellant offered no specific basis for the relief of interest. However, CDTFA agreed to abate interest from March 1, 2016, through August 31, 2016, based on an unreasonable delay during that time, which was not attributable to appellant. We have no basis on which to recommend additional relief.

HOLDING

1. Appellant is personally liable for Western’s unpaid sales tax liabilities for the period of October 1, 2011, through March 31, 2012.
2. Appellant is not entitled to relief of the late-filing penalties.
3. Relief of interest from March 1, 2016, through August 31, 2016 is warranted.

DISPOSITION

CDTFA’s actions in relieving interest from March 1, 2016, through August 31, 2016, but otherwise denying the petition, are sustained.

DocuSigned by:
Jeff Angeja
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Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:
Michael Geary
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Michael F. Geary
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge