

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**R. DUDUM**) OTA Case Nos. 18011888, 18011889  
) CDTFA Account No. 053-011795  
) CDTFA Case IDs 804367, 804368  
)  
)  
)**OPINION**

Representing the Parties:

For Appellant:

R. Dudum

For Respondent:

Joseph Boniwell, Tax Counsel

For Office of Tax Appeals:

Steven Kim, Tax Counsel

**S. BROWN**, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, R. Dudum (appellant) appeals two decisions issued by respondent California Department of Tax and Fee Administration (CDTFA)<sup>1</sup> denying appellant's petitions for redetermination of two Notices of Determination (NODs). The first NOD is dated March 10, 2014, and is for tax of \$95,827.63,<sup>2</sup> plus applicable interest, and penalties totaling \$39,852.50<sup>3</sup> for the period October 1, 2008, through December 31, 2010.<sup>4</sup> This NOD reflects CDTFA's determination that appellant is personally liable as a responsible person under R&TC section 6829 for the unpaid sales and use tax liabilities of Bing Crosby's Restaurant, Inc. (BCRI). The second NOD is dated March 12, 2014, and is for tax of \$144,744.63, plus

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<sup>1</sup> Sales taxes were formerly administered by the State Board of Equalization (BOE). In 2017, functions of BOE relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this opinion refers to acts or events that occurred before July 1, 2017, "CDTFA" shall refer to BOE; and when this opinion refers to acts or events that occurred on or after July 1, 2017, "CDTFA" shall refer to CDTFA.

<sup>2</sup> In its brief dated November 29, 2018, CDTFA states that appellant's current tax liability for BCRI's unpaid taxes pursuant to the March 10, 2014 NOD is \$95,477.63.

<sup>3</sup> These penalties consist of late-filing penalties, late payment penalties, a failure-to-file penalty, late prepayment penalties, failure-to-prepay penalties, and a penalty imposed pursuant to R&TC section 6565 for BCRI's failure to pay an NOD when it became final (finality penalty).

<sup>4</sup> OTA Case No. 18011888 and CDTFA Case ID 804367 pertain to the appeal of this NOD.

applicable interest, and penalties totaling \$56,344.24<sup>5</sup> for the period August 15, 2008, through December 31, 2010.<sup>6</sup> This NOD reflects CDTFA's determination that appellant is personally liable as a responsible person under R&TC section 6829 for the unpaid sales and use tax liabilities of Bing Crosby's Restaurant SD (BCRSD).

Appellant waived his right to an oral hearing; therefore, the matter is being decided based on the written record.

### ISSUES

1. Whether appellant is personally liable under R&TC section 6829 for unpaid sales and use tax liabilities of BCRI for the period October 1, 2008, through December 31, 2010, and of BCRSD for the period August 15, 2008, through November 30, 2010.
2. Whether relief of penalties asserted against BCRI and BCRSD is warranted.

### FACTUAL FINDINGS

1. BCRI, a California corporation, operated a restaurant in Walnut Creek, California. BCRI filed a Statement of Information with the California Secretary of State (SOS) on July 7, 2008, which appellant signed as the corporation's chief financial officer (CFO). The Statement of Information identified appellant as the corporation's CFO and secretary, and as one of the directors.
2. BCRSD, a limited liability company (LLC), operated a restaurant in San Diego, California. BCRSD filed a Statement of Information with the SOS on July 7, 2008, which appellant signed as CFO; the statement identified appellant as the LLC's CFO and secretary, and as one of the directors.
3. BCRI obtained a seller's permit with an effective start date of November 15, 2004, and appellant signed the Application for Seller's Permit with a signature dated October 1, 2004. BCRSD obtained a seller's permit with an effective start date of August 15, 2008, and appellant signed the Application for Seller's Permit with a signature dated August 1, 2008. Each application identifies appellant as the business's president.

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<sup>5</sup> These penalties include late filing/late payment penalties, failure-to-pay penalties, a failure-to-file penalty, late prepayment penalties, failure-to-prepay penalties, and a finality penalty.

<sup>6</sup> OTA Case No. 18011889 and CDTFA Case ID 804368 pertain to the appeal of this NOD.

4. In January 2011, CDTFA saw a local news report that BCRI's restaurant had closed. By email on January 6, 2011, appellant confirmed to CDTFA that BCRI had terminated its business operations on December 31, 2010. Consequently, CDTFA closed out BCRI's seller's permit effective December 31, 2010.
5. In February 2011, CDTFA spoke by telephone with the landlord of the shopping mall where BCRSD's restaurant was located; the landlord informed CDTFA that the restaurant had closed approximately two months earlier. Accordingly, CDTFA closed out BCRSD's seller's permit effective December 31, 2010. In October 2014, the mall's manager informed CDTFA by email that the restaurant had closed as of November 30, 2010; as a result, CDTFA adjusted BCRSD's effective closeout date to November 30, 2010.
6. Appellant concedes that BCRI terminated its business activities as of December 31, 2010, BCRSD terminated its business activities as of November 30, 2010,<sup>7</sup> and both businesses collected sales tax reimbursement on their taxable sales of tangible personal property during the respective liability periods.
7. On behalf of BCRI, appellant signed a Power of Attorney form dated May 11, 2010, granting BCRI's representative general authorization to discuss BCRI's sales and use tax quarterly filings. On behalf of BCRSD, appellant signed Power of Attorney forms dated March 16, 2010, April 16, 2010, and May 11, 2010, authorizing representatives to discuss BCRSD's sales and use tax matters.
8. Appellant signed an installment payment agreement with CDTFA dated May 20, 2010, for payment of sales and use tax liabilities of BCRI and BCRSD (and related businesses) for the period October 1, 2008, through March 31, 2010, listing his title as chief executive officer (CEO), member, and CFO. On behalf of BCRSD, appellant signed installment payment agreements with CDTFA dated August 31, 2009, and October 14, 2009, for payment of BCRSD's delinquent sales and use tax liabilities for the period August 15, 2008, through June 30, 2009, listing his title as CEO. Appellant also signed as CEO an installment payment agreement dated February 3, 2010, for BCRSD's

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<sup>7</sup> In his opening briefs to the Office of Tax Appeals, appellant contended that BCRSD was terminated as of November 30, 2010, and BCRI as of December 31, 2010, and thus this issue need not be addressed. Accordingly, we consider this element conceded.

delinquent sales and use tax liabilities for the period August 15, 2008, through June 30, 2010.

9. According to CDTFA's Automated Compliance Management System (ACMS) notes regarding BCRI, appellant communicated by telephone with CDTFA compliance staff on at least 15 occasions from December 26, 2008, to December 28, 2010, regarding BCRI's sales and use tax matters, including unpaid taxes, late returns, installment payment agreements, missed payments, and collection actions such as levies on BCRI's bank account.<sup>8</sup> The ACMS notes also reflect that appellant met with CDTFA staff in person at a CDTFA district office on July 1, 2009, and discussed estimates for when BCRI would be able to pay its unpaid tax liabilities, including unpaid prepayments for April 2009 and May 2009.
10. In an email exchange on August 11, 2010, appellant and CDTFA discussed BCRI's and BCRSD's tax matters, including levied bank accounts, past balances due, and steps towards an installment payment plan to pay those unpaid balances. By email sent on August 26, 2010, appellant and CDTFA discussed an installment payment agreement for BCRI, and appellant agreed to submit BCRI's financial information to CDTFA. In an email to CDTFA dated September 30, 2010, appellant wrote that BCRI would file its August 2010 prepayment return with payment by October 15, 2010. In an email dated January 30, 2011, appellant informed CDTFA that BCRI would be unable to make any payments towards its outstanding tax liabilities.

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<sup>8</sup> The ACMS notes for BCRI describe telephone conversations between CDTFA staff and appellant on dates including the following: December 26, 2008; April 15, 2009; June 25, 2009; July 22, 2009; July 24, 2009; November 30, 2009; December 10, 2009; December 17, 2009; January 14, 2010; August 26, 2010; October 19, 2010; November 30, 2010; December 16, 2010; and December 28, 2010. In addition, the ACMS notes also describe voicemail messages appellant left for CDTFA staff about BCRI's sales and use tax matters, such as when he anticipated BCRI would be able to pay unpaid taxes for specific time periods.

11. According to CDTFA's ACMS notes regarding BCRSD, appellant communicated by telephone with CDTFA staff on at least 14 occasions during the period from May 1, 2009, through September 30, 2010, to discuss BCRSD's sales and use tax matters, including unpaid taxes, late returns, installment payment agreements, and collection actions by CDTFA such as levies of BCRSD's bank account.<sup>9</sup>
12. Appellant signed a Waiver of Limitation form dated June 15, 2010, for a CDTFA audit of BCRI for the period April 1, 2007, through September 30, 2007, listing his title as CEO.
13. In a notarized affidavit dated August 5, 2010, signed under penalty of perjury, appellant declared that he was the CEO of Dudum Sports Entertainment, Inc., which is the parent company and principal shareholder of three businesses, including BCRI and BCRSD. In the affidavit, appellant stated that BCRI and BCRSD were being offered for sale, and that CDTFA should postpone its collection efforts against the businesses.
14. Appellant signed BCRI's July 2010 prepayment return dated September 3, 2010, BCRSD's July 2010 prepayment return dated September 29, 2010, and CRSD's August 2010 prepayment return dated October 1, 2010, listing his title as CEO.
15. Appellant signed a check to CDTFA dated September 3, 2010, for payment of BCRI's tax liabilities, and signed checks to CDTFA dated August 8, 2009, and April 1, 2010, for payment of BCRSD's tax liabilities.
16. Appellant signed business checks from BCRI dated February 27, 2009, April 28, 2009, and May 19, 2010, for payment of BCRI's fees to the County of Contra Costa, Health Services.<sup>10</sup> Appellant signed several checks from BCRSD with dates ranging from June 11, 2010, to November 19, 2010, for BCRSD's payments to one of BCRSD's vendors, Sysco.
17. During the liability periods, BCRI and BCRSD each continued to pay wages, vendors, and other business expenses. For example, records from the Employment Development

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<sup>9</sup> The ACMS notes for BCRSD describe these telephone conversations between CDTFA staff and appellant on dates including: May 15, 2009; July 28, 2009; August 11, 2009; August 19, 2009; August 25, 2009; December 15, 2009; December 21, 2009; December 23, 2009; January 14, 2010; January 15, 2010; January 27, 2010; and September 30, 2010. In addition, the ACMS notes describe voicemail messages from appellant regarding topics including BCRSD's unpaid taxes, installment payment agreements, and CDTFA's levies of BCRSD's funds.

<sup>10</sup> According to records from the County of Contra Costa, from 1Q09 through 2Q09 BCRI made payments totaling \$1,196.00 to that county.

Department indicate BCRI paid wages totaling \$2,007,383 from the fourth quarter of 2008 (4Q08) through 3Q10, and BCRSD paid wages totaling \$2,546,315 from 3Q08 through 3Q10. Records from Young's Market Company, a vendor, show that BCRI made payments totaling \$198,148.35, and BCRSD made payments totaling \$205,168.14 from 4Q08 through 3Q10. Records from BCRI's vendor BiRite Foodservice Distributors show that BCRI made payments totaling \$30,494.28 from 2Q10 through 3Q10. Records from BCRSD's vendors Sysco and Southern Wine & Spirits show that BCRSD made payments to Sysco totaling \$72,584.05 from 2Q10 through 4Q10 and made payments to Southern Wine & Spirits totaling \$14,501.92 from 2Q09 through 2Q10.

18. On March 10, 2014, CDTFA issued the above-referenced NOD to appellant for BCRI's unpaid sales and use tax liabilities. On March 12, 2014, CDTFA issued the above-referenced NOD to appellant for BCRSD's unpaid sales and use tax liabilities. Appellant timely petitioned each NOD on the grounds that he was not a responsible person under R&TC section 6829 for either BCRSD's or BCRI's liabilities.
19. On January 9, 2017, CDTFA issued a Decision and Recommendation finding that appellant's liability for BCRSD's unpaid taxes should be reduced from \$144,744.63 to \$112,156.05, due to BCRSD's termination of business operations on November 30, 2010, and that a penalty of \$30.02 for failure to pay by Electronic Funds Transfer should be removed from the liability, but otherwise that appellant's petition should be denied.
20. On January 10, 2017, CDTFA issued a Decision and Recommendation denying appellant's petition for redetermination regarding his liability for BCRI's unpaid liabilities.
21. Appellant filed these timely appeals.

#### DISCUSSION

Issue 1. Whether appellant is personally liable under R&TC section 6829 for unpaid sales and use tax liabilities of BCRI for the period October 1, 2008, through December 31, 2010, and of BCRSD for the period August 15, 2008, through November 30, 2010.

R&TC section 6829(a) provides that upon termination, dissolution, or abandonment of the business of a corporation or LLC, any person having control or supervision of, or who was charged with the responsibility for the filing of returns or the payment of tax, or who was under a

duty to act for the corporation in complying with any requirement of the Sales and Use Tax Law, is personally liable for the corporation's or LLC's unpaid tax, interest, and penalties, if the person willfully failed to pay or to cause to be paid any taxes due from the corporation. (See also Cal. Code Regs., tit. 18, § 1702.5(a).) Personal liability may be imposed only if CDTFA can establish that the corporation or LLC included or added tax reimbursement to the selling price of tangible personal property. (R&TC, § 6829(c); Cal. Code Regs., tit. 18, § 1702.5(a).) CDTFA bears the burden of proving, by the preponderance of the evidence, that the requirements of R&TC section 6829 have been satisfied. (Cal. Code Regs., tit. 18, § 1702.5(d).)

Hence, CDTFA must prove four elements by a preponderance of the evidence: (1) the business operations of BCRI and BCRSD have terminated; (2) BCRI and BCRSD each collected sales tax reimbursement; (3) appellant was a person responsible for BCRI's and BCRSD's sales and use tax compliance; and (4) appellant willfully failed to pay or to cause to be paid BCRI's unpaid tax liabilities and BCRSD's unpaid tax liabilities. (R&TC, § 6829; Cal. Code Regs., tit. 18, § 1702.5.)

Appellant concedes that the business operations of both BCRI and BCRSD have terminated and that both BCRI and BCRSD collected sales tax reimbursement during their respective liability periods. Thus, the disputed elements are whether appellant was a person responsible for BCRI's and BCRSD's sales and use tax compliance and whether appellant willfully failed to pay, or to cause to be paid, the unpaid tax liabilities of BCRI and BCRSD.

#### Responsible Person

A responsible person includes any person having control or supervision of, or who is charged with the responsibility for the filing of returns, or the payment of tax, or who has a duty to act for the corporation or LLC in complying with the Sales and Use Tax Law. (Cal. Code Regs., tit. 18, § 1702.5(b)(1).) As relevant here, personal liability may only be imposed if appellant was a responsible person at the time the corporation or LLC made the sales, collected the sales tax reimbursement, and failed to remit it to CDTFA. (R&TC, § 6829(c); Cal. Code Regs., tit. 18, § 1702.5(a).)

Appellant contends that he is not a responsible person for either BCRI or BCRSD because on September 15, 2009, he abandoned his position as each business's CEO and became Vice President of Operations for each business, and as such was responsible for the oversight of the restaurants' food quality and employee services, but not finances. Thus, appellant argues that

he no longer had control, supervision, or responsibility for filing either BCRI's or BCRSD's tax returns or paying taxes during the period when the taxes became due. Instead, appellant asserts that P. Haley and K. Hess, who were CFO and accountant, respectively, for both BCRI and BCRSD, were responsible for the businesses' sales and use tax compliance during the liability periods.

The evidentiary record contains extensive evidence of appellant's involvement in both BCRI's and BCRSD's sales and use tax matters throughout the liability periods. For example, appellant's involvement in tax compliance is evidenced by his signatures on an installment payment agreement on behalf of both BCRI and BCRSD in May 2010, and his signatures on installment payment agreements for BCRSD in August 2009, October 2009, and February 2010. Appellant also signed BCRI's July 2010 prepayment return dated September 3, 2010, BCRSD's July 2010 prepayment return dated September 29, 2010, and BCRSD's August 2010 prepayment return dated October 1, 2010. In 2010, appellant appointed a power of attorney to discuss each business's sales and use tax matters with CDTFA; appellant signed these and other documents listing his title as CEO. Moreover, emails and ACMS notes confirm that throughout the liability periods appellant directed payment of BCRI's and BCRSD's tax liabilities, and communicated with CDTFA about sales and use tax matters such as installment payment agreements, filings of quarterly and prepayment returns, and levies placed on the businesses' bank accounts. Based on the foregoing, we conclude that throughout the liability periods, appellant had control, supervision, and responsibility for filing tax returns and paying taxes, and had a duty to act for both BCRI and BCRSD in complying with provisions of the Sales and Use Tax Law.

Regarding appellant's position that other individuals were responsible for the businesses' sales and use tax compliance during the liability periods, there is no provision in R&TC section 6829 or California Code of Regulations, title 18, section 1702.5 that limits personal liability to only one person. Instead, more than one person can be liable under R&TC section 6829 as long as all of the requirements to impose responsible person liability are met. (See R&TC, § 6829; Cal. Code Regs., tit. 18, § 1702.5.) Here, the evidence clearly establishes that appellant's responsibilities included ensuring the businesses' compliance with provisions of the Sales and Use Tax Law, even if he may have delegated some responsibilities to other people.

Willfulness

The term “willfully fails to pay or to cause to be paid” means that the failure was the result of a voluntary, conscious, and intentional course of action. (R&TC, § 6829(d); Cal. Code Regs., tit. 18, § 1702.5(b)(2).) A failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or motive. (*Ibid.*) In order to show willfulness, CDTFA must establish all of the following: (1) on or after the date the taxes came due, appellant had actual knowledge that taxes were due, but not being paid; (2) appellant had the authority to pay the taxes or to cause them to be paid on the date the taxes became due and when he had actual knowledge that the taxes were due but not being paid; and (3) appellant had the ability to pay the taxes when he had actual knowledge that the taxes were due but not being paid, but chose not to. (Cal. Code Regs, tit. 18, § 1702.5(b)(2).)

Appellant contends that he did not willfully fail to pay or to cause to be paid BCRI’s or BCRSD’s unpaid tax liabilities. Specifically, appellant argues that he did not have actual knowledge that the taxes were unpaid, and that he did not learn of the unpaid taxes until early 2010. Appellant asserts that as Vice President of Operations, he did not have the authority to pay BCRI’s or BCRSD’s taxes because financial oversight was not a part of his job responsibilities.

There is substantial evidence demonstrating that at the times the taxes were due, appellant had actual knowledge of both BCRI’s and BCRSD’s unpaid sales and use tax liabilities. For example, the emails and ACMS notes document appellant’s communications with CDTFA on numerous occasions in 2009 and 2010 regarding topics including both BCRI’s and BCRSD’s delinquent returns and unpaid taxes, as well as discussions about collection actions and installment payment agreements for the unpaid liabilities. Appellant’s knowledge of the unpaid taxes is also established by his signatures on BCRSD’s August 31, 2009, October 14, 2009, and February 3, 2010 installment payment agreements, as well as his signature on the May 20, 2010 installment payment agreement covering both BCRI and BCRSD. Appellant’s August 2010 affidavit acknowledges CDTFA’s collection efforts against the businesses, and thus further demonstrates his knowledge of the unpaid tax liabilities. Given all of this evidence, there is no question that appellant knew at the times the taxes were due that BCRI’s and BCRSD’s taxes were unpaid.

The evidence also shows that throughout the liability periods, appellant had authority to pay the taxes for both BCRI and BCRSD. Evidence of appellant’s authority includes his

signatures on August 8, 2009, and April 1, 2010 checks to CDTFA for payment of BCRSD's tax liabilities, and on a September 3, 2010 check to CDTFA for payment of BCRI's tax liabilities. Similarly, appellant signed business checks from BCRI dated February 27, 2009, April 28, 2009, and May 19, 2010, for payment of BCRI's fees to the County of Contra Costa, Health Services, and signed several checks from BCRSD with dates ranging from June 11, 2010, to November 19, 2010, for BCRSD's payments to Sysco. Furthermore, appellant signed BCRI's July 2010 prepayment return, BCRSD's July 2010 prepayment return, and BCRSD's August 2010 prepayment return. In addition, appellant's role as CEO and his discussions with CDTFA staff regarding BCRI's and BCRSD's tax payments and installment payment agreements confirm that appellant had the authority to pay the taxes at issue or to cause them to be paid. In light of all of the above, we find no evidence to support appellant's allegation that his authority to pay taxes ended on September 15, 2009. Thus, we conclude that when appellant had actual knowledge that BCRI's and BCRSD's taxes were unpaid, he had authority to pay those taxes. Accordingly, this requirement for willfulness has been met.

Finally, the evidence demonstrates that both BCRI and BCRSD had funds available throughout the liability periods, as evidenced by their payments of wages (totaling at least \$2,007,383 by BCRI and \$2,546,315 by BCRSD), bills from vendors (totaling at least \$228,642.63 by BCRI and \$292,254.11 by BCRSD), and other business expenses. Moreover, both BCRI and BCRSD continued to operate and collect sales tax reimbursement from customers, and therefore had those funds available to pay tax liabilities. Therefore, we conclude that appellant had the ability to pay BCRI's and BCRSD's unpaid tax liabilities, but chose not to do so. Hence, we find that appellant willfully failed to pay or to cause to be paid BCRI's and BCRSD's unpaid tax liabilities during the respective liability periods.

Although appellant contends that he acquired actual knowledge only in "early 2010," there is abundant evidence (discussed above), including the ACMS notes from 2009 and BCRSD's 2009 installment payment agreements, proving that appellant had actual knowledge of the unpaid liabilities in 2009. Nevertheless, even if, *arguendo*, we accepted appellant's argument as true, appellant's actual knowledge in 2010 would still be sufficient to meet the knowledge requirement for willfulness. BCRSD did not terminate operations until November 30, 2010, and BCRI's operations terminated as of December 31, 2010. As discussed above, even after the date in early 2010 that appellant claims he learned of the unpaid taxes, he continued to have authority

to pay the taxes or cause them to be paid for both businesses, and continued to have funds available to pay those taxes. Consequently, even if we found that the evidence supported appellant's position (which we do not), appellant would still meet the elements for liability under R&TC section 6829.

Accordingly, we conclude that appellant is personally liable under R&TC section 6829 for BCRI's unpaid liabilities for the period October 1, 2008, through December 31, 2010, and for BCRSD's unpaid liabilities for the period August 15, 2008, through November 30, 2010.

Issue 2. Whether relief of the penalties asserted against BCRI and BCRSD is warranted.

There is no statutory or regulatory authority for relieving penalties in R&TC section 6829 determinations, but R&TC section 6592(a) provides that certain penalties may be relieved if the failure to timely file or pay 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. A person seeking relief of a penalty under R&TC section 6592 must submit a signed statement under penalty of perjury setting forth the facts upon which the person bases the claim for relief. (R&TC, § 6592(b).) The person subject to the penalties is the corporation or LLC. Thus, if reasonable cause is shown why BCRI and BCRSD failed to timely file their returns and pay their taxes, then those penalties may be relieved and, consequently, appellant's (derivative) liability for the penalties would also be eliminated.

Here, the penalties at issue consist of late filing/late payment penalties, failure-to-pay penalties, failure-to-file penalties, late prepayment penalties, failure-to-prepay penalties, and finality penalties, which are penalties eligible for relief under R&TC section 6592(a).<sup>11</sup> Appellant argues that BCRI and BCRSD should be granted relief of the penalties because there was reasonable cause for the failures to timely pay and file. Specifically, appellant contends that BCRI and BCRSD were both in poor financial situations with very little money to pay their debts, and as such, they chose to pay off only a few debts including employee wages and bills from food vendors.

First, we note that although appellant previously submitted to CDTFA Requests for Relief from Penalty, Collection Cost Recovery Fee, and/or Interest signed under penalty of perjury, appellant's stated reason for relief was that he was not a responsible person for BCRI or

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<sup>11</sup> CDTFA has already removed from appellant's liability a penalty against BCRSD for failure to pay by Electronic Funds Transfer. Therefore, relief of that penalty is not at issue in this appeal.

BCRSD under R&TC section 6829. Because we have determined that appellant meets all elements for responsible person liability, this argument fails.

Next, appellant's contentions regarding BCRI's and BCRSD's poor financial condition do not in any way demonstrate that the failures to timely pay and file were due to reasonable cause and circumstances beyond the businesses' control, nor that they occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect. To the contrary, appellant's contentions demonstrate a conscious decision to pay other business expenses instead of paying tax liabilities to CDTFA, thus evidencing that BCRI's and BCRSD's failures to pay their tax liabilities were within their control. Therefore, we conclude that BCRI's and BCRSD's failures to timely file returns and timely pay taxes were not due to reasonable cause and circumstances beyond their control. Consequently, relief of the penalties is not warranted.

#### HOLDINGS

1. Appellant is personally liable under R&TC section 6829 for BCRI's and BCRSD's unpaid sales and use tax liabilities for the respective liability periods.
2. Appellant is not entitled to relief of the penalties that were imposed on BCRI and BCRSD and included in appellant's liabilities under R&TC section 6829.

#### DISPOSITION

CDTFA's actions are sustained.

DocuSigned by:

*Suzanne B. Brown*

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Suzanne B. Brown

Administrative Law Judge

We concur:

DocuSigned by:

*Andrew J. Kwee*

3CADA62FB48B4CB  
Andrew J. Kwee

Administrative Law Judge

DocuSigned by:

*Daniel Cho*

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Daniel K. Cho

Administrative Law Judge

Date Issued: 10/1/2020