

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

In the Matter of the Appeal of:	)	OTA Case No. 240315572
<b>R. MONZON</b>	)	CDTFA Case ID 3-283-510
	)	
	)	
	)	
	)	

---

**OPINION**

Representing the Parties:

For Appellant:	Kevin VandenBroeke, Attorney
----------------	------------------------------

For Respondent:	Mari Guzman, Attorney
-----------------	-----------------------

For Office of Tax Appeals:	Corin Saxton, Attorney
----------------------------	------------------------

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, R. Monzon (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant’s petition for redetermination of a Notice of Dual Determination (NODD) with a Notice Service Date of October 29, 2021.<sup>1</sup> The NODD is for tax of \$17,764.14, plus applicable interest, and penalties totaling \$2,518.18 for the period July 1, 2017, through September 30, 2018 (liability period).<sup>2</sup> The NODD reflects CDTFA’s determination that appellant is personally liable as a responsible person for the unpaid sales tax liabilities of Prestige SNJ Xpress Auto Body of Lake Forest, Inc. (Prestige Lake Forest).

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, (Regulation) section 30209(a).

---

<sup>1</sup> As discussed below, on March 21, 2019, CDTFA obtained actual knowledge that the business operations of Prestige SNJ Xpress Auto Body of Lake Forest, Inc. had terminated. Thus, the NODD was timely issued within three years after the last day of the calendar month following the close of the quarterly period in which CDTFA obtained actual knowledge of the termination of business operations. (See R&TC, § 6829(f).)

<sup>2</sup> The tax deficiency consists of self-assessed liabilities identified in returns for the period July 1, 2017, through September 30, 2017, and the period January 1, 2018, through September 30, 2018. Thus, no liability exists for the period October 1, 2017, through December 31, 2017.

## ISSUE

Whether appellant is personally liable as a responsible person for Prestige Lake Forest's unpaid sales tax liabilities.

## FACTUAL FINDINGS

1. Prestige Lake Forest dba Prestige Auto Body Express was a corporation that operated a retail automotive body, paint, and interior repair business in Lake Forest, California. The business closed in February 2019.
2. On October 12, 2016, an attorney filed Prestige Lake Forest's Statement of Information with the California Secretary of State, listing A. Reynoso as the corporation's CEO, secretary, and CFO. Likewise, California Employment Development Department (EDD) records, customer reviews from the website Yelp.com,<sup>3</sup> and the commercial lease agreement identify A. Reynoso as the owner of Prestige Lake Forest.<sup>4</sup>
3. On November 2, 2016, appellant filed Prestige Lake Forest's seller's permit application, identifying himself as the corporation's treasurer and as the contact person for books and records and business activities.
4. On January 9, 2018, appellant signed as CFO a Statement of Information filed with the Secretary of State, reporting no change of information.
5. Appellant electronically filed Prestige Lake Forest's sales and use tax returns for the liability period. Appellant is listed as CFO on five of the returns.<sup>5</sup> Appellant electronically remitted prepayments for two of the returns, as follows: \$2,740 on February 26, 2018, for the first prepayment of 1Q18, and \$2,268 on March 26, 2018, for the second prepayment of 1Q18.

---

<sup>3</sup> Customer reviews posted on [www.yelp.com](http://www.yelp.com) are included in the evidentiary record as part of CDTFA's exhibits. Prestige Lake Forest's Yelp page identifies the business's owner by a shortened version of A. Reynoso's name.

<sup>4</sup> The lease agreement lists appellant as the manager.

<sup>5</sup> Appellant is listed as CFO on the first prepayment return for the third quarter 2017 (3Q17) (filed August 29, 2017), the second prepayment return for 3Q17 (filed September 25, 2017), the 3Q17 return (filed October 31, 2017), the first prepayment return for 1Q18 (filed February 26, 2018), and the second prepayment return for 1Q18 (filed March 26, 2018). There appears to be no dispute that appellant also filed the returns for 1Q18 (on June 12, 2018), 2Q18 (on August 13, 2018), and 3Q18 (on October 30, 2018); however, the record only contains return summaries for these returns, and the summaries do not include preparer information.

6. Appellant did not have check-signing authority for the corporation's bank account.<sup>6</sup> CDTFA obtained copies of Prestige Lake Forest's rent checks from its landlord, the majority of which are signed with A. Reynoso's signature; CDTFA asserts, and appellant has not disputed, that A. Reynoso's signatures appear to be from a signature stamp.
7. According to entries in CDTFA's Central Revenue Opportunity System (CROS),<sup>7</sup> appellant, identified in the notes as treasurer,<sup>8</sup> spoke with CDTFA several times between October 18, 2017, and September 5, 2019, regarding Prestige Lake Forest's sales tax compliance. During these conversations, appellant discussed Prestige Lake Forest's sales tax liabilities, upcoming payments,<sup>9</sup> and terms for a Payment Plan Agreement (PPA).<sup>10</sup>
8. On February 8, 2018, Prestige Lake Forest submitted its PPA to CDTFA. The PPA consists of two sections. "Section I: Payment Agreement" lists the payment period, amount due, and payment schedule. "Section II: Automatic Payment Authorization" authorizes electronic debits and lists the bank account number and routing number. Appellant signed Section I as CFO. Section II is signed with A. Reynoso's signature, and A. Reynoso's title is listed as CEO/President.
9. According to a CROS entry, during a telephone call on March 21, 2019, appellant informed CDTFA that the business had ceased operation in February 2019. The notes also indicate that appellant agreed to file Lake Forest's 4Q18 and partial 1Q19 returns, and that he expressed interest in a PPA to pay off the business's remaining tax balance.

---

<sup>6</sup> In response to a Business Operations Questionnaire, L. Santos Flores, who identified his job title at the business as "painter," indicated that appellant signed business checks and that the business did not charge customers sales tax. However, on appeal CDTFA concedes that appellant did not have check-signing authority. Thus, it appears likely that L. Santos Flores did not have knowledge of the corporate officers' specific responsibilities, and OTA gives no weight to his questionnaire response.

<sup>7</sup> CROS is CDTFA's software program that allows CDTFA to document communications between staff and taxpayers or their representatives.

<sup>8</sup> In the CROS notes, appellant is identified as Prestige Lake Forest's treasurer; however, it is unclear from the CROS notes whether appellant identified himself as treasurer during these conversations or whether CDTFA simply used the title listed in the seller's permit application.

<sup>9</sup> A November 14, 2017 CROS entry states: "Advised him to continue to make the \$1,200 [monthly] payments while his [payment plan agreement] is being evaluated, he said ok." A January 12, 2018 CROS entry states: "He wants to make a payment next [week], by 1/19/18."

<sup>10</sup> The November 14, 2017 CROS entry states: "He is proposing \$1,200 a month." A February 7, 2018 CROS entry states that CDTFA rejected this proposal, and that "[appellant] said they will pay \$1,500 monthly payments."

10. On February 2, 2020, appellant completed a Business Operations Questionnaire,<sup>11</sup> in which he identified his former title with the corporation as “Accounting/CFO” and that his responsibilities included tax accounts.
11. According to CROS notes, CDTFA received a call from a former Prestige Lake Forest employee, G. Romero, on May 22, 2020, in response to a Business Operations Questionnaire G. Romero received. The notes indicate that G. Romero told CDTFA that he handled payroll and that decisions were made by A. Reynoso, and that appellant was the Vice President of the company. When CDTFA asked if appellant was in charge of making business decisions, G. Romero stated, “no, all business decisions came from A. Reynoso.”
12. CDTFA received a letter dated October 14, 2021, from E. Inocencio, who states that he assisted appellant in bookkeeping and that during the last months of operation “we cannot make bill payments due to unavailability of funds and needs approval from owner [A.] Reynoso.”<sup>12</sup>
13. CDTFA determined that appellant was personally responsible under R&TC section 6829 for Prestige Lake Forest’s sales tax liabilities and issued the above-mentioned October 29, 2021 NODD.
14. Appellant filed a timely petition for redetermination, which CDTFA denied in a decision dated January 11, 2023. In its decision, CDTFA found that appellant lacked check- signing authority for Prestige Lake Forest’s bank account but could still make electronic payments on Prestige Lake Forest’s behalf. The decision did not refer to the statements of G. Romero or E. Inocencio, but noted that none of CDTFA’s records included any indication that appellant needed to obtain approval from another person to make a payment for Prestige Lake Forest. The decision also stated that at the CDTFA appeals conference, appellant conceded that: Prestige Lake Forest’s business had terminated; Prestige Lake Forest collected sales tax reimbursement; appellant had knowledge of the unpaid tax liabilities at the times the returns were filed; and when he

---

<sup>11</sup> CDTFA sends Business Operations Questionnaires (Form 1509) to former employees of closed businesses to obtain information about business operations when it is investigating possible responsible person liability for unpaid taxes.

<sup>12</sup> The context of this letter’s submission is unclear as it was not addressed in the briefing or CDTFA’s decision.

had such knowledge, Prestige Lake Forest had sufficient funds to pay the taxes at the time the taxes became due.

15. This timely appeal followed.

### DISCUSSION

R&TC section 6829 provides, in pertinent part, that a person is personally liable for the unpaid tax, penalties, and interest owed by a corporation, if all of 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 when due; (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 had 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, § 1702.5(a), (b).)

### Burden of Proof

For corporate officers, CDTFA must prove these elements by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 1702.5(d), (e).) That is, CDTFA must establish that the circumstances it asserts are more likely than not to be correct. (*Appeal of Eichler*, 2022- OTA- 029P.) However, if the person is not an officer or a member or a partner or a manager with ownership interest in the entity, the person is presumed to not be personally liable under Regulation section 1702.5(a), unless CDTFA rebuts this presumption with clear and convincing evidence. (Cal. Code Regs., tit. 18, § 1702.5(e).)

Appellant asserts that although A. Reynoso held out appellant as the corporation's CFO, the corporation took no action to provide him with that authority. Thus, appellant appears to argue that he was not actually the CFO. This argument is supported by an October 12, 2016 Statement of Information filed with the California Secretary of State that lists A. Reynoso as CFO, as well as the fact that a Statement of Information was filed on January 9, 2018, listing no changes. However, appellant's signature on this "no change" Statement of Information identifies his title as CFO, despite the document's representation that A. Reynoso remained the CFO.

Thus, this analysis considers two questions: (1) was appellant Prestige Lake Forest's "de facto" CFO; and (2) if so, by which standard of proof must CDTFA prove the four elements of

responsible person liability to hold a de facto CFO personally responsible for a business entity's liabilities pursuant to R&TC section 6829—by a preponderance of the evidence per Regulation section 1702.5(d), or by clear and convincing evidence per Regulation section 1702.5(e)?

A de facto officer is one who acts under the color of official title even though the legality of that title is deficient. (*Appeal of Treyzon*, 2023-OTA-399P.) But a solitary exercise of power, even under color of title, does not make one a de facto officer. (*Beraksa v. Stardust Records, Inc.* (1963) 215 Cal.App.2d 708, 714.) “To constitute such [a de facto] officer one must be in actual possession of the office and be exercising and discharging its functions and duties. He must hold office under some degree of notoriety, and exercise continuous acts of an official character.” (*John Paul Lumber Co. v. Agnew* (1954) 125 Cal.App.2d 613, 619.)

Here, appellant signed the January 9, 2018 Statement of Information as CFO, which indicates that appellant held himself out as CFO, even though the document indicated that the officers remained the same as those listed on the 2016 Statement of Information. In addition, on a Business Operations Questionnaire, appellant wrote that his former job title at the business was CFO; appellant signed the PPA as CFO; and appellant filed five sales and use tax returns with CDTFA during the liability period, which he signed as CFO. Thus, although appellant asserts that A. Reynoso held appellant out as CFO, it is apparent from the record that appellant held himself out as CFO to both the Secretary of State and to CDTFA. Accordingly, OTA finds that appellant was Prestige Lake Forest's de facto CFO during the liability period.<sup>13</sup>

Thus, OTA turns to the legal issue of the applicable burden of proof. The acts of de facto officers are as valid and binding on the corporation as those of de jure officers in any situation involving third persons who rely on the de facto officers' ostensible authority. (*Chandler v. Hart* (1911) 161 Cal. 405, 421-422; *Consumers' Salt Co. v. Riggins* (1929) 208 Cal. 537, 541.) Further, de facto officers cannot use the fact that they are not legally entitled to the office as a shield to escape liability to either the corporation or its creditors for their acts or omissions while functioning as officers. (See *McKeehan v. Pacific Finance Corp.* (1932) 120 Cal.App. 578, 585.) A de facto officer may not exercise the prerogatives of a corporate position and yet avoid

---

<sup>13</sup> Appellant is also listed as a manager in the lease agreement, the treasurer in the seller's permit application, and is identified as the Vice President by a former employee. While it is possible that appellant concurrently held multiple titles, the evidence is insufficient to show that appellant held a title in addition to CFO, and CDTFA does not claim that appellant held a title other than CFO.

its attendant fiduciary duties and liabilities. (*South Seas Corp. v. Sablan* (D.N. Mar. Is. 1981) 525 F.Supp. 1033, 1038, citing *In re Globe Drug Co.* (9th Cir. 1939) 104 F.2d 114, 117.)

Because de facto officers are in fact officers of the corporation, OTA concludes that they are not entitled to the presumption that applies to non-officers pursuant to Regulation section 1702.5(e). Accordingly, for a de facto officer to be personally liable for a corporation's unpaid taxes, interest, and penalties, CDTFA has the burden of proving the four elements of R&TC section 6829 by a preponderance of the evidence, not by clear and convincing evidence. Consequently, the preponderance of evidence standard applies to this appeal.

#### Elements of R&TC section 6829

Appellant concedes elements (1) and (2) of R&TC section 6829, as described above, and consequently, only elements (3) and (4) are in dispute, which are whether appellant was responsible for Prestige Lake Forest's sales and use tax compliance during the liability period, and whether appellant willfully failed to pay the liability or cause it to be paid. Appellant contends that he lacked authority to pay the taxes to CDTFA because he had to obtain A. Reynoso's approval and authorization for any payments. Appellant contends that he was not responsible for Prestige Lake Forest's sales and use tax compliance because he was employed as a bookkeeper and accounting associate by A. Reynoso, who abandoned the business when collection actions were taken. Appellant asserts that the statements of former employees demonstrate that A. Reynoso controlled the business and that appellant was simply an associate who assisted with the accounting side of the business.

#### Responsible Person

Personal liability can be imposed only on a responsible person. (R&TC, § 6829(b).) In this context, "responsible person" means 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 had a duty to act for the corporation in complying with any portion of the Sales and Use Tax Law when the taxes became due. (*Ibid.*; Cal. Code Regs., tit 18, § 1702.5(b)(1).) As relevant here, personal liability applies only if, when the person was a responsible person for the corporation, the corporation sold tangible personal property and collected sales tax reimbursement on the selling price of the property and failed to remit such tax reimbursement when due. (Cal. Code Regs., tit. 18, § 1702.5(a).)

Here, appellant listed himself on the business's seller's permit application as the contact person for business activities, and appellant filed returns during the liability period. Thus, it is apparent that appellant was charged with the responsibility for filing returns, and as the point of contact, appellant had a duty to act for the corporation in sales and use tax matters. Therefore, OTA finds that this element has been met.

#### Willfulness

"Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action. (R&TC, § 6829(d); Cal. Code Regs., tit. 18, § 1702.5(b)(2).) This failure may be willful even if it was not done with a bad purpose or motive. (Cal. Code Regs., tit. 18, § 1702.5(b)(2).) To show willfulness, CDTFA must establish all of the following:

- (A) On or after the date that the taxes came due, the responsible person had actual knowledge that the taxes were due, but not being paid.
- (B) The responsible person had the authority to pay the taxes or to cause them to be paid: (i) on the date that the taxes came due and (ii) when the responsible person had actual knowledge as defined in (A). A responsible person who was required to obtain approval from another person prior to paying the taxes at issue and was unable to act on his or her own in making the decision to pay the taxes does not have the authority to pay the taxes or to cause them to be paid.
- (C) When the responsible person had actual knowledge as defined in (A), the responsible person had the ability to pay the taxes but chose not to do so.

(Cal. Code Regs., tit. 18, § 1702.5(b)(2).) Hence, for the willfulness element, CDTFA must establish that appellant had knowledge, authority, and ability to pay.

First, appellant concedes that he had actual knowledge that the taxes were due, but not being paid. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(A); *Appeal of Eichler, supra.*) Therefore, this requirement is met. Moreover, appellant concedes that when he had such knowledge, Prestige Lake Forest had the ability to pay the taxes but chose not to do so. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(C).) Accordingly, this requirement is also met.



Thus, the only question regarding willfulness is whether appellant had authority to pay the taxes or to cause them to be paid: (i) on the date that the taxes came due; and (ii) when he had actual knowledge. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(B).) Appellant made electronic prepayments of \$2,740 on February 26, 2018, and \$2,268 on March 26, 2018, on prepayment returns appellant filed listing his title as CFO. Such evidence supports CDTFA's position that, even though appellant lacked check-signing authority, appellant had authority to make electronic payments for Prestige Lake Forest. In addition, the CROS notes show that appellant was the point of contact for sales tax matters, proposed terms for the PPA, frequently communicated with CDTFA about the business's tax liabilities, and promised CDTFA that the liabilities would be paid.

In contrast, the October 14, 2021 letter from E. Inocencio states that when he worked with appellant part-time as a bookkeeper at the business, they could not make bill payments due to unavailability of funds and because they needed approval from A. Reynoso; moreover, according to CROS notes, G. Romero told CDTFA that appellant was not in charge of making business decisions and that all business decisions came from A. Reynoso. Nevertheless, the preponderance of evidence demonstrating appellant's authority appears to refute those descriptions. If appellant lacked authority to cause the taxes to be paid, then it is unclear how he was able to make the two electronic prepayments and engage in the discussions with CDTFA about tax compliance that are reflected in the CROS notes, which include discussing terms for the PPA and promising that the business's tax liabilities would be paid. While not free from doubt, OTA finds the preponderance of evidence establishes that appellant had authority to pay the taxes or cause the taxes to be paid on the date the taxes were due. Accordingly, this requirement is met.

In summary, OTA finds that CDTFA has proven that all of the requirements of R&TC section 6829 have been met and that appellant is personally liable for the amounts at issue.

HOLDING

Appellant is personally liable as a responsible person for Prestige Lake Forest's unpaid sales tax liabilities.

DISPOSITION

CDTFA's action denying appellant's petition for redetermination is sustained.

DocuSigned by:

*Suzanne B. Brown*

47F45ABE89E34D0...

Suzanne B. Brown

Administrative Law Judge

We concur:

DocuSigned by:

*Keith T. Long*

DC88A60D8C3E442...

Keith T. Long

Administrative Law Judge

DocuSigned by:

*Teresa A. Stanley*

0CC6C6ACCC6A44D...

Teresa A. Stanley

Administrative Law Judge

Date Issued: 1/7/2025