

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

In the Matter of the Appeal of:  
**R. CHEREWICK**

) OTA Case No.: 240616402  
) CDTFA Case ID: 4-508-016  
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**OPINION**

Representing the Parties:

For Appellant: Jason E. Goldstein, Attorney  
For Respondent: Mari Guzman, Attorney  
Jarrett Noble, Attorney  
Jason Parker, Chief of Headquarters Ops.

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, R. Cherewick (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant’s administrative protest<sup>1</sup> of a Notice of Dual Determination (NODD) issued on June 30, 2022. The NODD is for tax of \$20,668.68, plus accrued interest, and penalties of \$4,069.12 for the period January 1, 2019, through July 31, 2019 (liability period). The NODD reflects CDTFA’s determination that appellant is personally liable as a responsible person for the unpaid taxes, plus applicable interest, and penalties that Global Entry Doors 32, LLC (GED) accrued during the liability period.

Office of Tax Appeals (OTA) Panel Members Teresa A. Stanley, Kim Wilson, and Sheriene Anne Ridenour held an oral hearing for this matter in Cerritos, California, on October 14, 2025. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, (Regulation) section 30209(b).

**ISSUE**

Is appellant personally liable as a responsible person for GED’s unpaid tax liabilities?

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<sup>1</sup> Appellant did not file a timely petition for redetermination, so CDTFA accepted appellant’s untimely petition as an administrative protest.

FACTUAL FINDINGS

1. GED, a California limited liability company located in Santa Ana, California, sold prefabricated and custom entry doors under a seller's permit with an effective start date of January 1, 2018. GED was owned by appellant (49 percent), M. Jenkins (49 percent), and an LLC that was wholly owned by appellant (Lakewood) (2 percent).
2. On July 12, 2021, M. Jenkins notified CDTFA that GED ceased its business operations at the end of July 2019. CDTFA closed GED's seller's permit effective July 31, 2019.
3. When CDTFA closed GED's seller's permit, GED had unpaid liabilities of: (1) taxes estimated by CDTFA for the first quarter of 2019 (1Q19) and a related finality penalty; (2) taxes estimated by CDTFA for 2Q19 and a related finality penalty; and (3) self-assessed taxes for July 1, 2019, to July 31, 2019, and a related late-filing penalty. GED's unpaid liabilities for the liability period consisted of taxes of \$20,668.68, plus interest, and penalties of \$4,069.12.
4. When GED failed to pay its outstanding liabilities, CDTFA investigated potential responsible persons.<sup>2</sup>
5. During the investigation, CDTFA determined that GED collected sales tax reimbursement during the liability period as GED's sales invoices separately charged sales tax, which was added to the total sales price.
6. CDTFA concluded that appellant was a responsible person with supervision or control over GED's sales and use tax matters based on the following: (1) GED's seller's permit application and a responsible person questionnaire signed by appellant identified appellant as a GED member; (2) appellant signed the lease for GED's premises as president of Lakewood; (3) appellant communicated with CDTFA during the liability period regarding sales and use tax matters; (4) appellant filed GED's sales and use tax returns (SUTRs) for the periods 2Q18, 3Q18, and 4Q18, just prior to the liability period; and (5) GED's initial Statement of Information (Statement) filed with the California Secretary of State (SOS) on March 11, 2016, and a "no change" Statement filed on July 18, 2018, named appellant as a manager/member.

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<sup>2</sup> CDTFA investigated both M. Jenkins and appellant and found both to be responsible persons. CDTFA may find more than one responsible person is liable for the same debt; however, CDTFA can collect the liability only once. (See R&TC, § 6829.)

7. CDTFA determined that appellant willfully failed to pay GED's unpaid taxes or failed to cause them to be paid based on the following:
- a. Appellant had actual knowledge that the taxes were due and not being paid because: (1) appellant filed GED's SUTRs for the periods 2Q18, 3Q18, and 4Q18 and had knowledge that SUTRs should be filed during the liability period; (2) on March 18, 2019, appellant directed M. Jenkins to "insert the \$5000 for the amended sales tax return that is due ASAP;" (3) on June 11, 2019, appellant directed M. Jenkins to "Prepare the tax amount due for the last quarter and send it to me by email ASAP," to which M. Jenkins replied "Are you talking about the 1st Q? If so, you have it because I sent it to you in April. Did you not file it?"; (4) on July 8, 2019, appellant asked M. Jenkins when "we" can make the sales tax payment to CDTFA that is "way past due"; and (5) CDTFA informed appellant by telephone on December 30, 2020, that GED's SUTRs for the periods 1Q19, 2Q19, and 3Q19 were then delinquent.
  - b. CDTFA determined appellant had the authority to pay the tax liabilities or cause them to be paid based on: (1) appellant's filing the SUTRs for 2Q18 through 4Q18, the periods immediately preceding the liability period; (2) appellant was a signer on GED's bank account and had access to it; (3) appellant signed GED checks, and paid some of GED's expenses, including taxes accruing prior to the liability period; (4) appellant was a managing member of GED and would have had authority over GED's financial matters; (5) in a responsible person questionnaire, M. Jenkins identified appellant as the person responsible for GED's sales and use tax matters; and (6) appellant informed CDTFA on April 6, 2021, that he would obtain GED bank statements, showing that appellant continued to have authority long after the liability period. Appellant testified at the oral hearing that he had a GED credit card and used it to pay GED's expenses during the liability period, including \$17,000 owed to CDTFA. Appellant testified that he helped M. Jenkins when requested to do so, including making payments for GED's expenses.
  - c. GED had the funds available during the liability that appellant could have used to pay the sales tax liabilities based on: (1) GED received payments from First Data Report Services of approximately \$208,000 in 1Q19, \$122,000 in 2Q19, and \$6,600 in July 2019; (2) deposits of approximately \$235,000 were made during the liability period; and (3) GED paid employee wages of approximately

\$95,000 during the liability period. Appellant testified at the oral hearing that he used a GED credit card to pay a sales tax liability of approximately \$17,000 for which he expected to be reimbursed.

8. Based on the foregoing, CDTFA determined that all elements of R&TC section 6829 were met, and that appellant was personally liable as a responsible person for GED's unpaid tax liabilities for the liability period. On June 30, 2022, CDTFA timely issued the NODD to appellant for \$20,668.68 in tax, plus accrued interest, and penalties totaling \$4,069.12, representing GED's unpaid tax liabilities for the liability period.
9. On January 20, 2023, appellant filed an untimely petition for redetermination, disputing the NODD in its entirety, which CDTFA accepted as an administrative protest.
10. CDTFA subsequently issued a decision denying appellant's administrative protest.
11. This timely appeal followed.
12. Appellant testified at the oral hearing that he knew what payments were due because M. Jenkins regularly informed him of GED's debts, revenues, and what was owed to certain vendors. Appellant also testified that he knew GED was doing business after December 31, 2019, because M. Jenkins informed him that: (1) GED still has warranties to handle; (2) GED still had some door orders that had to be fulfilled; and (3) GED had outstanding liabilities to pay. Appellant also testified that M. Jenkins informed him that one of the payments GED needed to make was for sales tax liabilities.
13. On appeal, appellant submits several emails that reflect the following:
  - a. On January 27, 2019, appellant asks M. Jenkins to provide a "cash flow sheet" for certain payments, including \$17,000 for sales tax.
  - b. On February 9, 2019, M. Jenkins informed appellant that GED needed to pay for a "container" it was receiving from a vendor, and that subsequently GED would still have six doors and four "compensation" doors coming from that vendor.
  - c. On March 18, 2019, appellant sent emails to M. Jenkins requesting that M. Jenkins add to a cash flow statement \$5,000 "for the amended return," and instructed M. Jenkins to schedule \$10,727.07 for various GED payments.
  - d. On March 19, 2019, appellant emailed M. Jenkins about making a payment to "Donnelly" on his GED credit card. Appellant also emailed "Vincent" stating that he would send a payment using his GED credit card.
  - e. On June 11, 2019, appellant instructed M. Jenkins to "prepare the tax amount due for the last quarter" and to send it to him ASAP.

- f. On July 8, 2019, in an email exchange between appellant and M. Jenkins, they discussed that both had paid their personal phone bills from the business account and that they both needed to reimburse the business (GED). Appellant also indicated that he had picked up a check from “one of [GED’s] few remaining installations.”
- g. On September 4, 2019, appellant requested M. Jenkins to fund GED’s bank account and asked if M. Jenkins’ brother would be preparing GED’s tax return.

### DISCUSSION

R&TC section 6829 provides that a person is personally liable for the tax, penalties, and interest owed by a business entity, here an LLC, if all the following elements are met: (1) the LLC has been terminated, dissolved, or abandoned; (2) the LLC collected sales tax reimbursement on its sales of tangible personal property and failed to remit such tax reimbursement to CDTFA or consumed tangible personal property and failed to pay the applicable tax to the seller or 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 LLC in complying with the Sales and Use Tax Law; and (4) the person willfully failed to pay taxes due from the LLC or willfully failed to cause such taxes to be paid. (R&TC, § 6829(a), (c); Cal. Code Regs., tit. 18, § 1702.5(a), (b).)

#### Elements of R&TC section 6829

##### Termination

The “termination” of the business of an LLC includes discontinuance or cessation of all business activities for which the LLC was required to hold a seller's permit. (Cal. Code Regs., tit. 18, § 1702.5(b)(3).)

M. Jenkins initially informed CDTFA that GED ceased its operations on April 30, 2019, which he later revised to July 31, 2019, at which time CDTFA closed GED’s seller’s permit. Appellant appears to contend that GED ceased operations at the end of 2018, at which time another business opened by M. Jenkins took over the inventory and premises and operated without appellant’s involvement. Appellant claims that his continuing involvement with GED throughout the liability period was only because he was trying to help M. Jenkins out and do the right thing. Appellant contends that he was unaware that he was still the managing member according to a Statement filed with the SOS in July 2018, and that M. Jenkins was supposed to correct that.

From the communications between appellant and M. Jenkins, and additional communications between appellant and CDTFA, it is clear appellant was aware that GED continued operations into 2019. For example: (1) appellant testified that M. Jenkins informed appellant that while sales would not continue after 2018, there were orders in process that needed to be fulfilled and installations needed to be made, among other things; (2) on February 9, 2019, M. Jenkins informed appellant that GED needed to pay for a “container” it was receiving from a vendor, and that subsequently GED would still have six doors and four “compensation” doors coming from that vendor; (3) on March 18, 2019, appellant instructed M. Jenkins to schedule \$10,727.07 for various GED payments; (4) on July 8, 2019, appellant informed M. Jenkins that he had picked up a check from “one of [GED’s] few remaining installations”; and (5) as late as September 4, 2019, appellant requested M. Jenkins to fund GED’s bank account .

In fact, GED continued to receive payments from customers as evidenced by deposits of approximately \$235,000 to GED’s bank account. Given the evidence that GED continued to do business until the end of July 2019, it is irrelevant what the managing members intended (i.e., to close out one business and start another without appellant’s involvement). Moreover, when appellant’s 49 percent interest is combined with Lakewood’s 2 percent interest, appellant held a majority ownership of GED and could have forced the closure of the business at any time but did not. Therefore, OTA finds that the evidence shows GED terminated on July 31, 2019.

#### Collection of Sales Tax Reimbursement

As relevant here, personal liability can be imposed only to the extent GED collected sales tax reimbursement on its sales of tangible personal property in this state but failed to remit the tax to CDTFA when due. (R&TC, § 6829(c); Cal. Code Regs., tit. 18, § 1702.5(a).)

GED’s sales invoices show that sales tax was separately charged and added to the total sales price. Thus, GED, in its ordinary course of business, did receive sales tax reimbursement on its sales of tangible personal property; namely doors. Appellant stated in his responsible person questionnaire that he did not know if GED received sales tax reimbursement, but he clearly knew GED’s sales were taxable and that the sales tax reimbursement needed to be paid to CDTFA. Otherwise, appellant would not have been involved in filing SUTRs for 2Q18 through 4Q18, discussing tax liabilities with M. Jenkins, or communicating with CDTFA about unfiled SUTRs and outstanding taxes owed. Therefore, OTA concludes that GED collected sales tax reimbursement for the liability period, which it did not remit to CDTFA.

### Responsible Person

A “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 GED in complying with any provision of the Sales and Use Tax Law when, as relevant here, the business 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. (R&TC, § 6829(b); Cal. Code Regs., tit. 18, § 1702.5(b)(1).) Simply because a person was an officer, member, manager, employee, director, shareholder or partner of a business is not, in and of itself, sufficient to establish that the person is a “responsible person.” (Cal. Code Regs., tit. 18, § 1702.5(b)(1).) As relevant here, personal liability applies only if the person was a responsible person for GED, GED sold tangible personal property and collected sales tax reimbursement on the selling price of the property, and the responsible person failed to remit such tax reimbursement when due. (See Cal. Code Regs., tit. 18, § 1702.5(a).)

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 GED in complying with any portion of the Sales and Use Tax Law when the taxes became due. (See *ibid.*; Cal. Code Regs., tit. 18, § 1702.5(b)(1).) Simply because a person possesses the title of a member, owner, manager, or employee, of a business is not, in and of itself, sufficient proof to establish that the person is a “responsible person.” (Cal. Code Regs., tit. 18, § 1702.5(b)(1).)

Appellant contends that he was not the person responsible for filing returns or payment of tax. Appellant testified that he was a “silent investor,” and M. Jenkins was the person who supervised and managed GED. Appellant asserts that M. Jenkins was also responsible for preparing and filing SUTRs and that appellant just assisted in filing returns when M. Jenkins gave him the necessary information. Appellant stated that M. Jenkins would “either tell me or email me what the information was, what the quarterly amounts that were due, and what was taxable, and what amounts to put in for those filings.”

Despite appellant’s contentions, the evidence strongly supports that he was a person responsible for sales and use tax matters. GED’s seller’s permit application identified appellant as the person responsible for GED’s books and records. On a responsible person questionnaire signed by appellant, appellant stated that he was a GED member and helped M. Jenkins with sales tax remittances. Appellant was named as manager/member on GED’s initial Statement filed with the SOS on March 11, 2016, and a “no change” Statement filed on

July 18, 2018. Appellant signed the lease for GED's premises as president of Lakewood, and in the lease is listed as a guarantor of the lease.<sup>3</sup> Appellant did file GED's SUTRs for 2Q18 through 4Q18, which shows that he had the authority to do so. Appellant communicated with CDTFA and with M. Jenkins during the liability period regarding sales and use tax matters, including getting GED's liabilities paid and filing SUTRs.

The fact that appellant wanted to be a "silent partner" and leave the day-to-day operations and management to M. Jenkins does not mean that he did not have the authority to act on behalf of GED for sales and use tax matters. In fact, as the de facto majority owner and member of GED, appellant had a duty to ensure that the company complied with the requirements of the Sales and Use Tax Law. Moreover, appellant did, in fact, take actions to ensure GED's SUTRs were filed and that taxes were paid. Although appellant may not have been primarily responsible for sales and use taxes, he did have control or supervision, which he in fact exercised. Appellant is therefore a responsible person under R&TC section 6829(b) and Regulation section 1702.5(b)(1).

#### 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 Reg., tit. 18, § 1702.5(b)(2).) To show willfulness, CDTFA must establish each 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 person responsible had actual knowledge as defined in (A), the person responsible had the ability to pay the taxes but chose not to do so.

(Cal. Code Regs., tit. 18, § 1702.5(b)(2).)

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<sup>3</sup> Appellant did not sign the separate guarantee form; M. Jenkins did.

### Knowledge

The first sub-element is that the responsible person 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*, 2022-OTA-029P.) Appellant contends that he did not have knowledge of the amount of sales, the amount of tax due, or whether sales tax was collected upon sales. However, the “actual knowledge” required by Regulation section 1702.5(b)(2) means that the responsible person knew the taxes were due but not being paid.

Here, appellant filed GED’s SUTRs for the periods 2Q18, 3Q18, and 4Q18 and had knowledge that SUTRs should be filed during the liability period. On January 27, 2019, appellant informed M. Jenkins that GED owed \$17,000 to CDTFA, that had not been paid. Appellant testified that he then paid with a company credit card. Also, on March 18, 2019, appellant directed M. Jenkins to “insert the \$5000 for the amended sales tax return that is due ASAP.” On June 11, 2019, appellant directed M. Jenkins to “Prepare the tax amount due for the last quarter and send it to me by email ASAP,” to which M. Jenkins replied “Are you talking about the 1st Q? If so, you have it because I sent it to you in April. Did you not file it?” Toward the end of the liability period appellant, on July 8, 2019, appellant asked M. Jenkins when “we” can make the sales tax payment to CDTFA that is “way past due.” Lastly, CDTFA informed appellant by telephone on December 30, 2020, that GED’s SUTRs for the periods 1Q19, 2Q19, and 3Q19 were delinquent. Appellant knew that taxes were owed but not paid during the liability period, which satisfied the knowledge requirement of Regulation section 1702.5(b)(2)(A).

### Authority

The second sub-element is that the responsible person 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 the responsible person had actual knowledge. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(B).) A responsible person who was required to obtain approval from another person prior to paying taxes 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. (*Ibid.*) Appellant contends that he did not have actual authority to pay sales tax liabilities because M. Jenkins had to tell appellant what amount to pay.

Counter to that contention, appellant testified that he knew what payments were due because M. Jenkins regularly informed him of GED’s debts, revenues, and what was owed to certain vendors, and whether appellant could assist in making payments. Moreover, appellant knew the amount due for the 4Q18 SUTR, as shown in the January 27, 2019 email, which

appellant later filed and paid. Appellant was a signer on GED's bank account, had access to it, and did, in fact, sign GED checks, and pay for some of GED's expenses, including taxes prior to the liability period. Appellant had a GED credit card which he used to pay GED's debts, including to a "Donelly" and "Vincent." Appellant instructed M. Jenkins to make sure the GED back account was funded as late as September 4, 2019, which indicates that appellant intended to use GED funds for an unspecified purpose. Appellant was also able to obtain GED's bank statements when CDTFA requested them in 2021. As a member of GED, appellant would have had authority over GED's financial matters, and in M. Jenkins' responsible person questionnaire, M. Jenkins identified appellant as the person responsible for GED's sales and use tax matters. Appellant noted in a July 8, 2019 email that both he and M. Jenkins had paid their personal phone bills from the business account, to which M. Jenkins responds that they both needed to reimburse the business. Although appellant may not have known who to pay and how much to pay them until M. Jenkins supplied that information, appellant did have authority to pay the taxes or to cause them to be paid without approval from any other person.

The foregoing evidence supports findings that 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 the appellant had actual knowledge.

#### Ability to Pay

The third sub-element is that when the responsible person had actual knowledge, 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)(C).) Appellant makes no specific arguments with respect to GED's ability to pay the taxes.

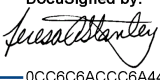
GED had the funds available during the liability that appellant could have used to pay the sales tax liabilities based on the following: (1) GED received payments from First Data Report Services of approximately \$208,000 in 1Q19, \$122,000 in 2Q19, and \$6,600 in July 2019; (2) deposits of approximately \$235,000 were made during the liability period; and (3) GED paid employee wages of approximately \$95,000 during the liability period. Appellant testified at the oral hearing that he used a GED credit card to pay a prior sales tax liability of approximately \$17,000, and there is no evidence that card was canceled or revoked during the liability period. CDTFA has established that appellant had the ability to pay at the time he was a responsible person and had knowledge of the liability.

HOLDING

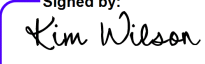
In summary, the evidence in the appeal record demonstrates that all the requirements of R&TC section 6829 have been met, and that appellant is personally liable for the amounts at issue.

DISPOSITION

OTA sustains CDTFA's decision denying appellant's administrative protest.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Kim Wilson  
Hearing Officer

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Sheriene Anne Ridenour  
Administrative Law Judge

Date Issued: 1/13/2026