OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **V. MOODY**	OTA Case No.: 240215493 CDTFA Case ID: 5-282-807 (2-779-816)

OPINION

Representing the Parties:

For Appellant:	Nancy Battel, Attorney V. Moody
For Respondent:	Vanessa Bedford, Attorney Chad Bacchus, Attorney Jason Parker, Chief of Headquarters Ops.
For Office of Tax Appeals:	Daniel Cho, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, V. Moody (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent)[1] denying in part appellant's timely petition for redetermination of a Notice of Dual Determination (NODD) issued on April 8, 2021. The NODD is for tax of $32,935.44, plus applicable interest, and penalties of $4,856.64[2] for the period January 1, 2014, through December 19, 2017 (liability period). The NODD reflects respondent's determination that appellant is personally liable for the unpaid liabilities of Metal Service Center, Inc. (MSC), which were accrued during the liability period.

Respondent's decision determined that appellant was only personally liable for MSC's unpaid taxes, interest, and penalties for the period of July 1, 2017, through December 19, 2017

[1] Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to respondent. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "respondent" shall refer to the board.

[2] The penalties consist of the following: (1) a 10 percent penalty of $1,047.20 for MSC's failure to pay or petition a Notice of Determination (NOD) before the liability went final (finality penalty) for the period January 1, 2014, through December 31, 2016; (2) a failure to file penalty of $1,498.72 for the fourth quarter of 2017 (4Q17); (3) a 10 percent finality penalty of $1,498.72 for 4Q17; and (4) a late-payment penalty of $812 for 3Q17.

(revised liability period)[3], and not for the remainder of the audit period. In addition, respondent determined that the estimated liability for the fourth quarter of 2017 (4Q17) was overstated and reduced the liability for this quarter. As a result, the remaining disputed amounts are $14,969.83 in tax, plus applicable interest, and penalties totaling $2,310.72[4] for the period July 1, 2017, through December 19, 2017.

Office of Tax Appeals (OTA) Panel Members Natasha Ralston, Keith T. Long, and Josh Lambert held a virtual oral hearing for this matter on January 22, 2026. 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

Whether appellant is personally liable for the unpaid liabilities of MSC.[5]

FACTUAL FINDINGS

1. MSC, a corporation, operated as retailer and fabricator of metal products during the revised liability period.
2. T. Moody, appellant's spouse, was listed as the CEO, Chief Financial Officer, Secretary, and director of MSC on the Statements of Information (SOIs) that were filed with the Secretary of State and dated June 29, 2004, and May 27, 2004.
3. On January 13, 2017, respondent sent MSC a letter informing MSC that it had been selected for audit for the period January 1, 2014 through December 31, 2016. Afterwards, respondent communicated with T. Moody regarding the audit of the business.
4. T. Moody passed away on May 25, 2017; however, MSC continued to operate. In addition, on May 30, 2017, appellant emailed respondent with the news of T. Moody's passing and requested the audit of MSC be postponed.

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[3] The liability period on the NOD is listed as January 1, 2014, through December 19, 2017; however, respondent decided that appellant was only personally liable for MSC's unpaid liabilities for 3Q17 and 4Q17. Therefore, the liability period at issue in this appeal is only for July 1, 2017, through December 19, 2017.

[4] The penalties consist of the following: (1) a late-payment penalty of $812 for 3Q17; (2) a failure-to-file penalty of $749.36 for 4Q17; and (3) a finality penalty of $749.36 for 4Q17.

[5] On appeal to OTA, appellant has not disputed the penalties. Therefore, it is OTA's understanding that appellant disputes the penalties to the extent that she contends she is not personally liable for any of MSC's unpaid liabilities, and OTA will not address the penalties separately.

5. On July 10, 2017, appellant filed an SOI that listed appellant as CEO and director of MSC.
6. Respondent met with appellant on August 8, 2017, at the business location to discuss the audit of MSC. During this meeting, appellant provided MSC's resale certificates to respondent.
7. On or before August 24, 2017, MSC made a sales tax prepayment of $4,229 for July 2017.
8. On September 4, 2017, and January 9, 2018, appellant signed Waiver of Limitation forms extending the time within which respondent could issue a determination in the audit of MSC.
9. On October 3, 2017, MSC made a sales tax prepayment of $3,000 for August 2017.
10. On January 30, 2018, MSC filed a claim for refund, which was signed by appellant as office manager. In addition, appellant filed a Notice of Closeout form for MSC, which is dated January 30, 2018, and states that the business terminated as of December 19, 2017. Appellant signed the Notice of Closeout as MSC's office manager.
11. MSC filed its 3Q17 sales and use tax return (SUTR) on February 16, 2018.[6]
12. Appellant filed a second Notice of Closeout of MSC's business operations, which was dated March 14, 2018.
13. MSC did not file an SUTR for 4Q17. As a result, respondent estimated MSC's liability and issued a Notice of Determination (NOD) on February 4, 2021. MSC did not pay or petition the NOD, and the liability went final on March 8, 2021.
14. Based on the Notice of Closeout forms, respondent closed MSC's seller's permit with an effective closeout date of December 19, 2017.
15. Following the closure of MSC's business, respondent began an investigation of whether appellant could be held personally liable for the unpaid liabilities of MSC.
16. Based on its audit of the business, respondent determined that MSC collected sales tax reimbursement. Specifically, audit item 1 was the measure of sales tax reimbursement collected versus sales tax reported.
17. Next, respondent determined that appellant was a person responsible for MSC's compliance with the Sales and Use Tax Law, including the filing of SUTRs and the payment of tax, based on the following: (1) appellant was listed as a director on MSC's SOI filed on June 29, 2004; (2) appellant had conversations with respondent during the

[6] The SUTR is unsigned and it is not clear who prepared or filed it on MSC's behalf.

audit of the business as reflected on respondent's Assignment Activity History; (3) appellant filed and signed a claim for refund on behalf of MSC; (4) appellant signed two Waiver of Limitation forms dated September 14, 2017, and January 9, 2018; and (5) appellant signed two Notice of Closeout forms informing respondent that MSC's business terminated, which were dated January 30, 2018, and March 14, 2018.

18. Respondent determined that appellant had knowledge of the tax liabilities at issue because appellant discussed the liabilities with respondent on February 28, 2018, and March 14, 2018, which were recorded in respondent's internal records. Specifically, on March 14, 2018, respondent informed appellant that MSC did not file its 4Q17 SUTR.

19. Respondent also determined that appellant had the authority to act on MSC's behalf based on the following: (1) appellant had multiple contacts with respondent regarding MSC's sales and use tax matters beginning in August 2017, (2) appellant hired an outside party for the purpose of trying to sell MSC's business; (3) appellant had access to, and the ability to use, MSC's bank account; and (4) appellant signed checks that allowed MSC to pay rent and its employees' wages.

20. Lastly, respondent determined that MSC had funds available to pay the liabilities because wages were paid to employees during the liability period. In addition, MSC's bank account showed a summary of disbursements regarding payroll and payments made to "others." Appellant signed MSC's checks for the payment of MSC's employees and MSC's rent. Respondent also found that MSC collected sales tax reimbursement, which it did not remit. As a result, respondent concluded that MSC had the ability to pay but chose to pay other creditors.

21. Based on the foregoing, respondent concluded that appellant met all of the requirements of R&TC section 6829, and respondent issued the NODD to appellant.

22. Appellant filed a timely petition for redetermination disputing the NODD in its entirety.

23. Respondent issued a Decision reducing the liability to $14,969.83 in tax, plus applicable interest, and penalties of $2,310.72 for the revised liability period, and otherwise denying the petition for redetermination.

24. This timely appeal followed.

DISCUSSION

R&TC section 6829 provides that a person is personally liable for the tax, penalties, and interest owed by a business entity, here a corporation, if all of the following elements are met: (1) the business for which the corporation was required to have a seller's permit 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 respondent or consumed tangible personal property and failed to pay the applicable tax to the seller or respondent; (3) the person had control or supervision of, or was charged with the responsibility for, the filling 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 the 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).)

On appeal,[7] appellant argues that she was not a person responsible for MSC's sales and use tax matters. Instead, appellant claims that her husband was in complete control over the business, including the sales and use tax matters. Appellant further explains that her role was only as an office manager and her duties included opening mail, making collection calls, answering phones, and things of this nature. Appellant states that the people responsible for MSC's sales and use tax liabilities were her husband and MSC's bookkeeper. In short, appellant argues that she was not a person responsible for MSC's sales and use tax compliance.

In addition, appellant contends that she was not willful with respect to the failure to pay MSC's tax liability. Appellant states that she was not aware that MSC failed to file its 3Q17 or 4Q17 SUTR, and it was not until March 14, 2018, that appellant was informed that MSC did not file its 4Q17 SUTR. Appellant states that by that time, the business had ceased operating and no longer had any funds available in its bank account. Furthermore, appellant states that MSC's bookkeeper did not communicate any information regarding MSC's failure to file its 3Q17 or 4Q17 SUTR. As a result, appellant was under the impression that the bookkeeper filed MSC's returns and made the necessary payments.

[7] Appellant also requested innocent spouse relief, which respondent denied on June 25, 2024. Respondent's denial letter stated that appellant could file a request for reconsideration with respondent, but appellant did not do so. Appellant then requested innocent spouse relief in her appeal to OTA. However, the requirements for innocent spouse relief include that the liability is attributable to the non-requesting spouse. (Cal. Code Regs., tit. 18, § 35055(i)(2).) In this appeal, the liability is appellant's personal liability and not a liability that originated from appellant's husband. Therefore, innocent spouse relief is inapplicable here.

Respondent must prove all of the elements of R&TC section 6829 by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 1702.5(d); *Appeal of Treyzon*, 2023-OTA-399P.) That is, respondent must establish that the circumstances it asserts are more likely than not to be correct. (*Appeal of Treyzon*, *supra*.) Because appellant has not conceded any of the elements, OTA will address them all.

Termination of Business

Regulation section 1702.5(b)(3) defines "termination" of the business of the corporation as including the discontinuance or cessation of all business activities for which the corporation was required to hold a seller's permit or certificate of registration for the collection of use tax.

Here, there is no dispute that appellant filed two Notices of Closeout forms that informed respondent that MSC's business operations terminated on December 19, 2017. In addition, respondent closed MSC's seller's permit with an effective closeout date of December 19, 2017. Therefore, OTA concludes that this element has been met.

Collection of Sales Tax Reimbursement

Personal liability can only be imposed to the extent that the corporation added tax reimbursement on its sales of tangible personal property in this state and failed to remit such tax reimbursement. (R&TC, § 6829(c); Cal. Code Regs., tit. 18, § 1702.5(a).)

Here, respondent's audit of the business established that MSC added sales tax reimbursement to the selling price of tangible personal property. Appellant has not presented any evidence or arguments that would dispute this finding. Therefore, OTA concludes that this element has been met.

Person Responsible for Sales and Use Tax Matters

Personal liability can only be imposed on a responsible person, and there may be more than one 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. (R&TC, § 6829(b); 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, the evidence establishes that appellant was the CEO of MSC during 3Q17 and 4Q17. CEOs are presumed to have broad implied and actual authority to do all acts customarily connected with the business. (See *Commercial Security Co. v. Modesto Drug* Co (1919) 43 Cal.App.162 173-174.) Respondent also presented evidence that appellant communicated with respondent's auditor after appellant's husband passed away on May 25, 2017. In addition, appellant signed two Waivers of Limitation and a claim for refund on behalf of MSC. Appellant also signed and filed two Notice of Closeout forms informing respondent that MSC ceased operating its business as of December 19, 2017. This evidence clearly indicates that appellant was a person responsible for MSC's sales and use tax matters.

Although appellant argues that her husband was the person primarily responsible for MSC's sales and use tax compliance, there is no dispute that appellant's husband passed away prior to the revised liability period. After this event, it appears that appellant took on the role and responsibility of managing MSC's business, which included communicating with respondent's auditor, managing MSC's bank account, and winding up the business. As a result, during the revised liability period, the evidence indicates that it was more likely than not that appellant was the person responsible for MSC's sales and use tax compliance.

With respect to appellant's argument that MSC's bookkeeper was the person responsible for the corporation's sales and use tax matters, there is no evidence that the bookkeeper communicated directly with respondent. In addition, there is no evidence that MSC's bookkeeper filed or submitted any relevant documentation to respondent on behalf of the corporation. Nonetheless, even if MSC's bookkeeper was a person responsible for the corporation's compliance with the Sales and Use Tax Law, as a matter of law, there can be more than one person responsible for sales and use tax matters, although the liability would only be paid once. Thus, appellant's argument that the bookkeeper was a person responsible for MSC's sales and use tax matters has no relevance in determining whether appellant is personally responsible for the unpaid liabilities of the corporation.

Based on the foregoing, OTA concludes that respondent has established that appellant was a person responsible for MSC's sales and use tax matters.

<u>Willfulness</u>

The final requirement is that the evidence establishes that appellant willfully failed to pay the taxes due or willfully failed to cause such taxes to be paid. In this context, "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).) A failure may be found 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, the evidence must establish that on or after the date that the taxes became due, appellant had actual knowledge that the taxes were due, but not being paid and, at the same time, appellant had the authority and the ability to pay the taxes or to cause them to be paid. (*Ibid*.)

The first requirement for willfulness is that the responsible person has 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.)

Here, during the revised liability period, appellant communicated with respondent regarding the audit of the business. Specifically, on August 8, 2017, appellant met with respondent's auditor at the business location to discuss the ongoing audit. During this meeting, appellant discussed the following issues regarding MSC's sales and use tax liability: (1) resale certificates; (2) sales tax reconciliation showing a difference of $11,000 of recorded sales tax reimbursement collected versus reported sales tax; and (3) the taxability of delivery charges. As appellant concedes, at this meeting she became aware of the outstanding sales tax liabilities of MSC.

In the following months, appellant had several discussions with respondent on various topics, including XYZ letters, partial manufacturing exemption certificates, interest applied to the audit tax liability, and the optional online payments. Appellant also received copies of the audit work papers. On December 12, 2017, appellant emailed respondent, saying that appellant's accounting team did not agree with the audit results; this indicates that appellant at the very least reviewed the audit work papers. During this time, appellant also signed a Waiver of Limitation that extended the statute of limitations for respondent to issue a Notice of Determination to MSC.

In addition, appellant informed respondent that she was in control of the business's bank account. She signed checks that allowed MSC to pay its employees' wages. Appellant also signed check payments for MSC's rent. MSC made sales tax prepayments of $4,229 for July 2017 and $3,000 for August 2017. There is no evidence in the record that anyone other than appellant had access to MSC's bank account. As a result, it is more likely than not that appellant made these prepayments or authorized these payments to be made, which indicates that she was aware of MSC's filing and payment requirements.

Lastly, there is no dispute that as of her March 14, 2018 conversation with respondent, appellant was aware that MSC failed to file its 4Q17 SUTR.

Based on the foregoing, OTA concludes that appellant had the requisite knowledge and this requirement is met.

The second requirement is that the responsible person has authority to pay the taxes or to cause them to be paid. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(B).) This authority must coincide with the first requirement, knowledge, meaning that the person must have the authority to pay the taxes known to be due. (*Ibid*.)

Here, there is no dispute that appellant had check signing authority for MSC during the revised liability period. Appellant conceded that she had access to MSC's bank account and issued checks for rent and employee wage payments. Therefore, this requirement is met.

The third requirement for willfulness is that when the responsible person had actual knowledge that taxes were due and the authority to pay the taxes, that person also had the ability to pay the taxes but chose not to do so. (Cal. Code Regs., tit. 18, § 1702.5(b)(2)(C).)

Here, respondent provided evidence of MSC's bank account that established that it had funds available during the revised liability period. In addition, appellant concedes that MSC collected sales tax reimbursement, which means that it had the funds available. However, appellant argues that MSC did not have any funds left when she became aware of the liabilities at issue. Appellant states that the corporate bank account had been closed as of December 2017, and she was informed of the liabilities by March 2018.

The purpose of R&TC section 6829 is to hold a responsible person liable for any sales tax reimbursement collected but not remitted. Merely disbursing all of the corporation's funds prior to a tax due date does not mean that the corporation did not have the ability to pay. To allow such an argument would defeat the purpose of R&TC section 6829 because a taxpayer could always drain a corporation's bank account prior to the due date of a SUTR. In addition, there is no dispute that appellant was a person in charge of MSC's bank account and that appellant controlled the disbursements of MSC's bank account. Therefore, to the extent that appellant is arguing that she used all of the sales tax reimbursement that was collected for other obligations of MSC prior to the due date of the returns, OTA finds appellant's argument unpersuasive, and that the willfulness requirement is met.

Based on the foregoing, respondent has met its burden of proof as to all of the elements of R&TC section 6829.

HOLDING

Appellant is personally liable for the unpaid liabilities of MSC.

DISPOSITION

Respondent's decision to reduce the liability to $14,969.83 in tax, plus applicable interest, and penalties of $2,310.72 for the liability period, but otherwise deny the petition for redetermination, is sustained.

Signed by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:
Susana Seyller
6FE2EBECC6F6481... For
Keith T. Long
Administrative Law Judge

Signed by:
Josh Lambert
CB1E7DA37831416...
Josh Lambert
Administrative Law Judge

Date Issued: 3/16/2026