OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **A. ABOLFAZLI**	OTA Case No.: 240215362 CDTFA Case ID: 3-694-456

OPINION

Representing the Parties:

For Appellant: A. Abolfazli

For Respondent: Amanda Jacobs, Attorney
Chad Bacchus, Attorney
Jason Parker, Chief of Headquarters Ops.

For Office of Tax Appeals: Daniel Cho, Attorney

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, A. Abolfazli (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] partially denying appellant's administrative protest[2] of a Notice of Dual Determination (NODD) issued on February 23, 2022. The NODD is for tax of $27,721.11, plus applicable interest, and penalties of $4,698.91[3] for the period January 1, 2019, through July 31, 2019 (liability period). The NODD reflects CDTFA's determination that appellant is personally liable for the unpaid sales and use tax liabilities of Amin Auto Group, Inc. (AAG), which were accrued during the liability period.

[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 CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

[2] If a taxpayer files a petition for redetermination after the expiration of the 30-day period authorized in R&TC section 6561, CDTFA may accept it as an administrative protest; however, such an appeal does not qualify as a valid petition for redetermination. (Cal. Code Regs., tit. 18, § 35019.)

[3] The penalties consist of the following: (1) a late-filing penalty of $1,307.35 for the first quarter of 2019 (1Q19); (2) a failure-to-file penalty of $1,439.19 for 2Q19; (3) a failure-to-file penalty of $489.59 for 3Q19; and two 10 percent penalties totaling $1,464.78 pursuant to R&TC section 6565 for AAG's failure to pay two NODs dated March 26, 2020, before the NODs went final.

Office of Tax Appeals (OTA) Panel Members Greg Turner, Michael F. Geary, and Suzanne B. Brown held a virtual oral hearing for this matter on August 20, 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

Whether appellant is personally liable for the unpaid sales and use tax liabilities of AAG for the liability period pursuant to R&TC section 6829.[4]

FACTUAL FINDINGS

1. AAG operated as a used car dealership in California during the liability period. AAG's Articles of Incorporation were filed with the Secretary of State (SOS) on February 2, 2005, showing appellant's signature as the sole director of the corporation. Appellant signed AAG's application for seller's permit, dated May 6, 2005, as the sole corporate officer.
2. On or about January 1, 2015, appellant left the United States to attend medical school, which continued until November 2019. Thereafter he had rotations at various locations in the United States, followed by his medical residency outside of California.
3. On August 10, 2017, appellant filed an SOS Statement of Information for AAG that identified appellant as Chief Executive Officer and President and listed M. Nouri as Secretary and Chief Financial Officer.
4. From November 1, 2016, through October 31, 2018, M. Nouri filed AAG's quarterly sales and use tax returns (SUTRs). During that period, most of AAG's tax payments on those SUTRs were made by M. Nouri, except that appellant made a payment of $9,180 on June 25, 2018.
5. On March 20, 2019, appellant filed AAG's fourth quarter 2018 (4Q18) SUTR with a payment of $10,000.
6. On June 23, 2019, M. Nouri untimely filed AAG's self-assessed non-remittance SUTR for 1Q19, reporting a tax liability of $16,411. CDTFA applied credits to AAG's account

[4] Although CDTFA's Appeals Bureau Decision included two additional issues (penalty relief and interest relief), during the OTA prehearing conference appellant confirmed that he is not including those issues in the current appeal. Appellant states that he has no knowledge of whether AAG is entitled to relief of penalties or interest; thus, appellant only disputes the penalties and interest to the extent that he contends he is not personally liable for any of AAG's unpaid liabilities. Accordingly, OTA will not address the penalties or interest relief separately.

and issued a Demand for Immediate Payment (Demand) dated July 11, 2019, for the remaining tax balance due of $13,073.50, plus applicable interest, and a late-filing penalty of $1,307.35.

7. AAG did not file a timely 2Q19 SUTR, and did not file a SUTR for July 1, 2019, through July 31, 2019 (date of termination). According to notes in CDTFA's computer system, CDTFA spoke with appellant by telephone on November 8, 2019, and appellant confirmed that he was AAG's corporate officer. Appellant informed CDTFA that AAG's business had closed and that he would have someone file AAG's final SUTR. CDTFA's November 8, 2019 notes also state that CDTFA informed appellant that AAG had made prepayments for 2Q19 but had not filed an SUTR for that quarter, and that AAG had a balance due of $15,503.44 for 1Q19.

8. Appellant subsequently filed a Notice of Closeout with CDTFA; the Notice of Closeout is dated November 8, 2019, and states that the business closed on July 31, 2019. Also on November 8, 2019, appellant signed a CDTFA-82 Form, Authorization for Electronic Transmission of Data, listing his title as President, which allowed CDTFA to communicate with appellant via email regarding AAG's sales and use tax liabilities.

9. For 2Q19, CDTFA estimated AAG's tax liability based on an average of AAG's last four SUTRs. On March 26, 2020, CDTFA issued a Notice of Determination (NOD) to AAG for 2Q19 for tax of $14,371.89, plus applicable interest, and a failure-to-file penalty of $1,437.19. The NOD also listed payments/credits of $4,620.02. AAG did not pay or petition the NOD within 30 days of issuance, which resulted in an additional 10 percent penalty for failure to pay the tax before the determination became final pursuant to R&TC section 6565 (finality penalty). On April 28, 2020, CDTFA issued to AAG a Demand for the 2Q19 liabilities.

10. For the period July 1 through July 31, 2019, CDTFA estimated AAG's tax liability based on AAG's last four SUTRs; on March 26, 2020, CDTFA issued to AAG an NOD for July 2019 for tax of $4,895.92, plus applicable interest, and a failure-to-file penalty of $489.59. AAG did not pay or petition the NOD within 30 days of issuance, which resulted in the application of a finality penalty of $489.59. On April 28, 2020, CDTFA issued to AAG a Demand for the July 2019 liabilities.

11. Following the closeout of AAG's seller's permit, CDTFA investigated whether appellant might be personally liable for the unpaid tax liabilities of AAG pursuant to R&TC section 6829.

12. CDTFA sent out Business Operations Questionnaires to AAG's former employees. M. Nouri, who listed his title as AAG's general manager, responded to the questionnaire and stated that AAG collected sales tax reimbursement and that appellant was responsible for AAG's sales and use tax matters.
13. CDTFA obtained copies of text messages and email communications between appellant and M. Nouri. Text exchanges during the period December 2018 to September 2019, and emails during the period February 2018 to December 2018, show discussions about AAG's sales, tax filings, and other aspects of the business operations. CDTFA also obtained AAG's financial information, such as bank statements.
14. According to notes in CDTFA's computer system, appellant spoke with CDTFA on November 8, 2021, and stated that when he left the United States to be an international student, he left M. Nouri and R. Mousavi in charge of the business. The notes indicate that appellant stated that he, M. Nouri, and R. Mousavi all had authority to sign checks on AAG's bank account.
15. Appellant filed an untimely 2Q19 SUTR for AAG, which appellant signed and dated December 22, 2021. Afterwards, appellant spoke by telephone with CDTFA on December 23, 2021, and stated that he was not disputing CDTFA's estimate of AAG's tax liability for 3Q19.
16. Based on CDTFA's investigation, CDTFA concluded that appellant met all of the elements necessary to be personally liable for the unpaid liabilities of AAG for the liability period.
17. CDTFA issued the February 23, 2022 NODD to appellant.
18. Appellant filed an untimely petition for redetermination, which CDTFA accepted as an administrative protest.
19. CDTFA issued a Decision that ordered a reaudit to reduce the tax liability for 2Q19 to the amount filed on AAG's 2Q19 SUTR but otherwise denied appellant's administrative protest.
20. This timely appeal to OTA 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 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 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).)

CDTFA bears the burden of proving 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, CDTFA must establish that the circumstances it asserts are more likely than not to be correct. (*Appeal of Treyzon*, *supra*.)

Here, appellant concedes the first element of R&TC section 6829, that all of AAG's business activities for which it was required to hold a seller's permit have terminated. (Cal Code Regs., tit. 18, § 1702.5(b)(3).) Accordingly, this Opinion will analyze whether CDTFA has met its burden of proving the remaining three elements of R&TC section 6829.

Collection of Sales Tax Reimbursement

Personal liability can only be imposed to the extent that the corporation 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, AAG's vehicle sales contracts show that AAG charged and collected sales tax reimbursement. In addition, in his response to a Business Operations Questionnaire, M. Nouri confirmed that AAG collected sales tax reimbursement. Accordingly, OTA finds that this element of R&TC section 6829 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).)

Simply because a person was an officer, member, manager, employee, director, shareholder or partner 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).) A chief executive officer, however, is presumed to have broad implied and actual authority to do all acts customarily connected with the business, including ensuring its compliance with the Sales and Use Tax Law, even if that responsibility is delegated to others. (See *Commercial Sec. Co. v Modesto Drug Co.* (1919) 43 Cal.App.162, 173.) The president of a corporation is the chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. (Corp. Code, § 312(a).) More than one person may be held liable under R&TC section 6829 for the same primary liability, as long as the requirements for imposing such liability on each person are satisfied. (See R&TC, § 6829.)

On appeal, appellant argues that when he left the United States to attend medical school, he ceased being a person responsible for sales and use tax matters and thus was not a responsible person during the liability period. Appellant contends that M. Nouri, the general manager of AAG, was the person responsible for all aspects of AAG's operation, which included sales and use tax compliance. Appellant states that prior to the liability period, he informally agreed to transfer control of the business to M. Nouri and another AAG employee, but this was an oral agreement, and the audio recording of the meeting no longer exists.

Although appellant was no longer residing in California, he remained AAG's president and had broad authority over AAG throughout the liability period. AAG's August 10, 2017 Statement of Information appellant filed with the SOS identified appellant as Chief Executive Officer and President, and there was no subsequent filing removing appellant from these roles.[5] Moreover, the November 8, 2019 notes in CDTFA's computer system reflect that appellant identified himself to CDTFA as AAG's corporate officer. Further, appellant filed AAG's 4Q18 SUTR in March 2019, filed AAG's 2Q19 SUTR in December 2021, and made tax payments to CDTFA in June 2018, March 2019, and May 2019. In addition, appellant's text messages and emails show that he remained involved in AAG's business operations. Thus, the evidence does not support appellant's contention that he transferred all control of the business prior to the liability period.

Hence, the evidence clearly establishes that appellant was a person responsible for sales and use tax matters, including filing and paying tax, and had a duty to act for AAG in sales

[5] Similarly, AAG's seller's permit lists appellant as the sole corporate officer, and there was no subsequent filing or other notification to CDTFA indicating that appellant's role within AAG had changed.

and use tax matters pursuant to R&TC section 6829(b) for the entire liability period. Therefore, OTA finds CDTFA has met its burden of proving that this element is met.

Willfulness

The final element 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.) Appellant argues that he did not have actual knowledge of AAG's liabilities. Appellant testified that he did not know the amounts of the sales AAG made during the relevant quarters and thus did not know how much AAG owed to CDTFA.

AAG's 1Q19 taxes were due by April 30, 2019. During a telephone conversation on November 8, 2019, CDTFA told appellant that AAG had a balance due of $15,503.44 for 1Q19. Consequently, the evidence establishes that as of November 8, 2019, appellant knew of AAG's unpaid 1Q19 liabilities, including the specific amount due.

Moreover, appellant's text exchanges with M. Nouri in May and June 2019 are evidence of appellant's knowledge of AAG's unpaid sales tax liabilities for 1Q19. For example, in a June 21, 2019, text exchange, appellant wrote "We must file taxes and make plan. Situation is getting out of hand." On June 23, 2019, M. Nouri untimely filed AAG's 1Q19 non-remittance SUTR, reporting a tax liability of $16,411. In a June 24, 2019 text exchange, M. Nouri wrote in part that "if you already file the return for first quarter you will be ok even without make [sic] the balance" and that appellant should call CDTFA's Irvine office "and discuss about the payment later"; appellant replied that he would call. Accordingly, this evidence supports a finding that in June 2019, appellant was aware that AAG's 1Q19 taxes were unpaid.

AAG's 2Q19 taxes were due by July 31, 2019. During a telephone conversation on November 8, 2019, CDTFA informed appellant that AAG had made prepayments for 2Q19 but had not filed an SUTR for that quarter. Therefore, the evidence establishes that as of

November 8, 2019, appellant knew that AAG's 2Q19 taxes were unpaid. Moreover, appellant's text exchanges with M. Nouri also show appellant's knowledge of AAG's 2Q19 unpaid sales tax liabilities. In a September 21, 2019, text exchange, appellant asked M. Nouri "Where is sales tax file?" and M. Nouri replied in part "I didn't have time to finish the sales tax!" Thus, the evidence indicates that appellant knew by September 21, 2019, that AAG's 2Q19 tax liabilities were unpaid.

AAG's taxes for the month of July 2019 were due by October 31, 2019. When appellant spoke with CDTFA by telephone on November 8, 2019, he stated that someone would file AAG's final SUTR. Thereafter, AAG did not file a SUTR for July 2019. Thus, the evidence establishes that at least as of November 8, 2019, appellant knew that AAG's July 2019 taxes were unpaid.

Regarding appellant's argument that he did not know of the specific amounts due to CDTFA, OTA finds this contention unpersuasive given appellant's ongoing communications with M. Nouri regarding the taxes, and appellant's ability to communicate with CDTFA about the tax balance due.[6] Thus, the evidence establishes that appellant had actual knowledge that the taxes were due, but not being paid.

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*.)

Appellant contends that once he left California to attend medical school in January 2015, his involvement in the business was sporadic and minimal, and that M. Nouri had exclusive control over the business's operations and financial decisions. Appellant acknowledges that he had access to AAG's bank account but testified that he did not know the password to AAG's sales and use tax account on CDTFA's website. Appellant argues that for these reasons, he lacked the authority to pay the taxes or cause them to be paid.

The evidence of appellant's ongoing communications with M. Nouri regarding AAG's business operations, including sales and use tax matters, shows that appellant continued to be involved in AAG's business after 2015 and through the liability period. Moreover, appellant made tax payments to CDTFA in June 2018, March 2019, and May 2019, which demonstrates his authority to pay the taxes during the liability period. The evidence is clear, and appellant

[6] For example, in appellant's June 24, 2019 text exchange with M. Nouri, appellant agreed that he would call CDTFA to discuss the 1Q19 tax liability; thus, appellant either knew the amount due for 1Q19 or could have obtained that information from CDTFA.

does not dispute, that he had check-signing authority on AAG's bank account for all relevant time periods. Regarding appellant's position that he lacked authority because he did not know the password to AAG's account on CDTFA's website, OTA finds this unpersuasive given the evidence that appellant paid taxes to CDTFA during the liability period and filed AAG's 2Q19 SUTR by paper. In light of all evidence, OTA finds that appellant had authority to pay the taxes or cause them to be paid during the relevant time periods and, accordingly, this requirement has been met.

The third requirement for willfulness is that when the responsible person had actual knowledge that taxes were due, the 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).) Appellant contends that at the time the taxes were due, there were insufficient funds to pay the liabilities because the funds in AAG's bank accounts were owed to other people. Appellant testified that when AAG sold a vehicle, AAG was obligated to pay funds to a finance company that AAG had contracted with, so that the finance company would release the title to the vehicle, so that the customer could register the vehicle with the Department of Motor Vehicles. Appellant contends that he could not pay the taxes because he did not know what amounts were owed to the finance company, and paying the finance company was AAG's first priority. Further, appellant argues that he did not obtain the specific amounts until December 2021, and at that time AAG had no funds available.

Bank statements and other financial records show deposits and payments to AAG totaling approximately $375,000 between January 1, 2019, and April 30, 2020; for example, in its account at JP Morgan Chase, AAG had deposits of almost $12,000 after May 27, 2019, $38,000 in June 2019, $83,000 in July 2019, and over $30,000 in August 2019. On April 30, 2020, AAG's account balance with Bank of America was $1,879. Thus, the evidence establishes that AAG had sufficient funds available to pay the 1Q19, 2Q19, and 3Q19 tax liabilities at the times when appellant knew those liabilities were due and unpaid. Moreover, given that AAG collected sales tax reimbursement from customers on sales, the collected sales tax reimbursement was available to pay AAG's sales tax liabilities to CDTFA.

Regarding appellant's argument that AAG was first obligated to pay the finance company, use of collected sales tax reimbursement to pay other creditors indicates that a business had funds available to pay taxes but elected to use those funds for other purposes. Thus, appellant's argument that he did not know the amounts AAG owed to the financing company is unpersuasive; given that, as discussed above, appellant was aware of tax due to CDTFA, it is immaterial whether appellant knew what separate amounts AAG owed the financing company. Accordingly, OTA finds that appellant had knowledge of the unpaid liabilities and had the ability to pay them at the relevant times in 2019 but elected not to do so. Given this finding, it is immaterial whether AAG had funds available in 2021. Consequently, this third requirement of willfulness is met.

Therefore, OTA concludes CDTFA has met its burden of proving that appellant willfully failed to pay or to cause to be paid AAG's unpaid sales and use tax liabilities for the liability period, and thus appellant is personally liable under R&TC section 6829 for those liabilities.

HOLDING

Appellant is personally liable for the unpaid liabilities of AAG.

DISPOSITION

CDTFA's action reducing the liability for 2Q19 to the amount reported on AAG's 2Q19 SUTR but otherwise denying the administrative protest is sustained.

Signed by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

We concur:

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Michael F. Geary
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Michael F. Geary
Administrative Law Judge

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

Date Issued: 11/17/2025