


STATE BOARD OF EQUALIZATION

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November 30, 1993

Ms. T--- L. O---
P---, G--- & G---
Attorneys at Law
XXXX --- ---, XXth Floor
--- ---, CA XXXXX

Re: Revenue and Taxation Code Section 6829

Dear Ms. O---:

The State Board of Equalization has received your letter dated August 16, 1993 addressed to the Board's Principal Auditor at the Culver City office. Your letter has been forwarded to this office for response.

Since you have not identified a particular taxpayer in your letter, this response cannot constitute the "written advice" specified in Revenue and Taxation Code section 6596.

In your letter, you ask (on behalf of M--- A. P---) if personal liability for sales tax arises under the following facts:

1. Corporation X, a validly incorporated entity in California, was selling a product subject to sales tax through July 15, 1993.
2. On July 15, 1993, Corporation X's source of financing foreclosed on Corporation X. That lender then sold Corporation X's assets to Corporation Y upon foreclosing on Corporation X. The principal officer of Corporation X was employed by Corporation Y as its principal officer.
3. A sales tax accrued for the second quarter of 1993 to Corporation X which it did not pay.
4. Corporation X collected sales tax only for the first two months of the second quarter and only a portion of the third month.

You state that it is your conclusion that there is no personal liability for the principal officer of Corporation X because no taxes were due from Corporation X "since it was effectively no longer in business on the date that the taxes were due".

Under California law, a corporation may not dissolve until its officers have paid or made provisions for all known debts and obligations (Cal. Corp. Code § 1905.) Corporation X's principal officer had the responsibility to file a tax return for the second quarter of 1993 for sales made during that quarter and to pay the tax due on those sales on behalf of the corporation even if the corporation was no longer in business. A corporate officer's duties do not end when the corporation's collateral has been foreclosed.

The failure of Corporation X's corporate officer to pay the sales tax due for sales generated for the second quarter on July 31, 1993 will make the corporate officer personally liable for the tax as of that date. Revenue and Taxation Code section 6829 envisions a termination of a corporate business, then a determination if the corporate business has an outstanding tax liability and then a further determination whether the corporate officer who has the duty to pay the tax liability has wilfully failed to pay the liability. If the corporate officer has failed to pay the tax liability in these circumstances, personal liability will be imposed. It is irrelevant whether the corporate business has terminated prior to the date that the tax is required to be paid to the Board.

You also ask if liability is limited to the amount of tax collected by Corporation X during the second quarter or whether liability is also to include the amount uncollected during the second quarter.

Revenue and Taxation Code section 6829 provides that personal liability may be imposed if the corporation added tax reimbursement to the selling price of the tangible personal property sold. Since Corporation X was required to report sales tax liability on an accrual basis, the corporate officer's liability will extend to any sales made by the corporation to which sales tax reimbursement was added to the selling price whether or not the total sales price was eventually collected.

However, to the extent that the corporation can reduce its tax liability under the provisions of the Sales and Use Tax Law (see for example Regulations 1641 and 1642), the corporate officer's liability will be similarly reduced.

Very truly yours,

Thomas Cooke
Staff Counsel

TJC:plh