

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petitions for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 WILLIAM BLAINE RIGGLE) Account Number: SR FHB 53-003157
 6) Case IDs 417558 & 417559
 7 Petitioner) Carlsbad, San Diego County

8 Type of Liability: Responsible person liability
 9 Liability periods: 7/1/2001 – 8/31/2004 (Case ID 417558)
 4/1/2004 – 7/31/2004 (Case ID 417559)

10 Item	11 Disputed Amounts		12		
13 Responsible person liability	\$1,774,736.79 (Case ID 417558)				
	\$ 28,641.41 (Case ID 417559)				
			14		
		15 Case ID 417558		Case ID 417559	
		16 Taxes	17 Penalties	18 Taxes	19 Penalties
20 As determined		\$1,539,215.89	\$287,924.58	\$25,040.46	\$3,625.95
Adjustment - Sales & Use Tax Dept.		- 52,403.68	0.00	0.00	0.00
21 Proposed redetermination, protested		<u>\$1,486,812.21</u>	<u>\$287,924.58</u>	<u>\$25,040.46</u>	<u>\$3,625.95</u>
22 Proposed tax redetermination		\$1,486,812.21		\$25,040.46	
Interest through 2/29/12		1,043,494.30		16,352.87	
23 Penalties		<u>287,924.58¹</u>		<u>3,625.95²</u>	
Total tax, interest, and penalties		\$2,818,231.09		\$45,019.28	
24 Payments		<u>0.00</u>		<u>25.00</u>	
25 Balance Due		<u>\$2,818,231.09</u>		<u>\$44,994.28</u>	
26 Monthly interest beginning 3/1/12		<u>\$8,673.07</u>		<u>\$145.92</u>	

27 These matters were previously scheduled for Board hearing on October 28, 2011, but were
 28 postponed at petitioner's request due to a scheduling conflict.

1 The penalties in the amount of \$287,924.58 include: eight late-payment-return penalties totaling \$175,483.58; four late-prepayment penalties totaling \$24,321.98; three prepayment-made-after-the-quarter penalties totaling \$6,279.60; seven Electronic Funds Transfer (EFT) prepayment penalties totaling \$55,196.35; an estimated prepayment penalty of \$3,988.32; two EFT penalties totaling \$10,789.47; two amnesty interest penalties totaling \$11,855.37; and a finality penalty of \$9.91.
 2 The penalties in the amount of \$3,625.95 include a late-payment return penalty of \$3,391.20 for 2Q04, and a late-prepayment penalty of \$234.75 for July 2004.

UNRESOLVED ISSUE

Issue: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of 21st Century Oil Corporation (21st Century) and 21st Century Oil-Front Company dba ARCO AM/PM (Front) pursuant to Revenue and Taxation Code section 6829. We conclude that he is.

During the liability periods 21st Century (SY FHB 97-823789) and Front (SR EH 100-206567) operated gasoline stations with mini-markets. The Sales and Use Tax Department (Department) closed out 21st Century's seller's permit effective August 31, 2004, after it was determined that the 17 sub-locations operating under 21st Century's seller's permit were owned by individual LLC's, and closed out Front's seller's permit effective March 23, 2005, after it was notified that Front was sold. 21st Century and Front had incurred substantial unpaid tax liabilities. The Department determined that 21st Century and Front had charged and collected sales tax reimbursement on their retail sales, and that petitioner was responsible for managing 21st Century and Front's financial affairs including sales and use tax matters during the liability period.³ The Department concluded that petitioner willfully failed to pay or cause to be paid 21st Century and Front's sales and use tax liabilities because they both had funds available at the time the taxes became due but chose to pay other creditors. The Department concluded that all four elements for imposing section 6829 liability on petitioner for the unpaid liabilities of 21st Century and Front were met.

Petitioner contends that 21st Century and Front's unpaid liabilities did not result from *his* willful decision to not pay those liabilities, and that he should thus not be held personally liable for those unpaid liabilities. Petitioner argues that his role was limited to taking direction from the president, William Zures, and that despite being listed as 21st Century and Front's chief financial officer (CFO), he had no actual decision-making authority about what bills to pay and when. Petitioner contends that following Mr. Zures' death on May 25, 2004, he took control of the business only out of necessity, explaining that there was turmoil and chaos following Mr. Zures' death, and during this time both businesses were having difficulty paying their bills.

³ For example, petitioner was listed on various corporate documents as 21st Century or Front's CEO, CFO, Vice-President, or Secretary; he signed at least some of their sales and use tax returns; he signed checks in payment of the sales taxes; and he was their contact person for sales and use tax matters.

1 One requirement to find willfulness is that the responsible person must have had knowledge of
2 the tax liability. We find that petitioner knew 21st Century and Front's sales and use tax liabilities
3 were not being paid. Petitioner signed and filed 21st Century's returns for the first quarter 2003
4 (1Q03), 4Q03, and 2Q04 without remittance. He met with the Department to discuss 21st Century's
5 sales and use tax account on September 1, 2004, and met with the Department regarding Front's
6 unpaid sales and use liabilities on five separate occasions from 2005 through 2007. To impose liability
7 under section 6829, the responsible person must also have had the authority to pay, or to cause to be
8 paid, the taxes when due. We find that petitioner had tax payment authority. On numerous occasions
9 petitioner discussed with the Department setting up payment arrangements and replacing dishonored
10 checks, and both businesses chose to pay wages to their employees and bills from their fuel supplier
11 out of their gross receipts *and* sales tax reimbursement collected during the liability periods.

12 Petitioner's arguments, the declarations by Kevin Sullivan (21st Century's former president)
13 and Kenneth Weiss (21st Century's accountant), and the transcription of an audiocassette tape left by
14 Mr. Zures prior to his death, that alleged petitioner did not have tax payment authority, are not
15 persuasive. We conclude this documentation does not sufficiently show that petitioner did not exercise
16 his authority independently, that he was CFO in name only, or that he had no authority to pay the taxes
17 due without Mr. Zures' prior authorization. Rather, the evidence shows that petitioner was deeply
18 involved in 21st Century and Front's finances and was actively involved in preparing sales and use tax
19 returns and seeing that the taxes were paid. We conclude that all conditions have been satisfied for
20 imposing personal liability on petitioner under section 6829 for the outstanding sales and use tax
21 liabilities of 21st Century and Front.

22 OTHER MATTERS

23 The liabilities asserted against petitioner include penalties incurred by 21st Century and Front.
24 We advised petitioner that he could submit requests for relief of those penalties on behalf of 1st
25 Century and Front, but he has not done so. We therefore have no basis to consider recommending
26 relief of these penalties.

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28 Summary prepared by Pete Lee, Business Taxes Specialist II