

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION PETITION FOR REHEARING SUMMARY

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

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

Item	Disputed Amounts			
Responsible person liability	\$616,654 (Case ID 417558)			
	\$ 28,666 (Case ID 417559)			
			<u>Case ID 417558</u>	<u>Case ID 417559</u>
			<u>Taxes</u>	<u>Penalties</u>
As determined	\$1,539,215.89	\$287,924.58	\$25,040.46	\$3,625.95
Pre-D&R adjustment	- 52,403.68	0.00	0.00	0.00
Board-ordered adjustment	- 935,540.21	-222,542.68		
Post-Board hearing adjustment			<u>0.00</u>	<u>-234.75</u>
Proposed redetermination, protested	<u>\$ 551,272.00</u>	<u>\$ 65,381.90</u>	<u>\$25,040.46</u>	<u>\$3,391.20</u>
Proposed tax redetermination	\$551,272.00		\$25,040.46	
Interest through 11/30/12	379,918.25		17,561.95	
Penalty for late payment of a return	55,127.20		<u>3,391.20</u>	
EFT penalty	3,480.10			
EFT prepayment penalty	<u>6,774.60</u>			
Total tax, interest, and penalties	\$996,572.15		\$45,993.61	
Payments	<u>0.00</u>		<u>25.00</u>	
Balance Due	<u>\$996,572.15</u>		<u>\$45,968.61</u>	
Monthly interest beginning 12/01/12	<u>\$2,756.36</u>		<u>\$125.08</u>	

The Board heard these matters on February 1, 2012, upholding the liability asserted against petitioner pursuant to Revenue and Taxation Code section 6829 for the tax debts of 21st Century Oil Corporation, SY FHB 97-823789 (21st Century) for the period April 1, 2004, through August 31, 2004 (but not for the period July 1, 2001, through March 31, 2004) and for the tax debts of 21st Century Oil-Front Company dba ARCO AM/PM, SR EH 100-206567 (Front Company) for the period April 1, 2004, through July 31, 2004. Petitioner filed a timely Petition for Rehearing (PFR), which was

1 scheduled for consideration by the Board on the consent calendar at its September 2012 meeting. The
2 matter was pulled from that calendar at the request of Member Runner, and scheduled for
3 consideration on the adjudicatory calendar.

4 UNRESOLVED ISSUE

5 **Issue:** Whether the petition for rehearing should be granted. We recommend that the Board
6 revise its decision to remove the \$234.75 prepayment penalty from the liability asserted for Front
7 Company, and that the petition for rehearing be denied.

8 Although petitioner was a responsible person for both corporations for all relevant periods, the
9 Board concluded that he did not willfully fail to pay or to cause to be paid the tax debts of 21st Century
10 as to amount due prior to the death of William Zures, the corporation's president, on May 25, 2004,
11 because he did not have the actual authority to pay the taxes during the life of Mr. Zures. Petitioner
12 asserts that the same conditions applied after the death of Mr. Zures, with his widow, Ms. Maggie
13 Zures, simply taking his place. We conclude that is not what happened. Ms. Zures clearly depended
14 on petitioner's knowledge and relied on him to continue operating the business. Although two outside
15 experts were brought in to advise Ms. Zures (at petitioner's suggestion), petitioner has not shown that
16 he lacked authority to pay or to cause to pay the taxes due. The taxes remaining at issue are those that
17 became due after Mr. Zures died, that is, the currently due taxes for which the corporation was *at that*
18 *time* collecting tax reimbursement that could have, and should have, been used to pay those current
19 liabilities. As chief financial officer, we believe that petitioner had an affirmative duty to make some
20 realistic effort to see that the *current* liabilities for which the corporation was then collecting tax
21 reimbursement were paid, and not to just sit back and wait to see what outside persons might negotiate.
22 We conclude that the Board correctly denied petitioner's appeal as to the amounts remaining at issue in
23 case ID 417558 (21st Century).

24 With respect to Front Company (case ID 417559), we conclude that the business was
25 transferred to the former owner as of August 1, 2004, and that petitioner was a responsible person for
26 sales and use tax compliance who willfully failed to pay or to cause to be paid the taxes due on July 31,
27 2004, for the second quarter 2004. However, the prepayment penalty included in the liability resulted
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1 from the failure to make a prepayment in August 2004, when petitioner was no longer a responsible
2 person.

3 We recommend that the Board revise its decision in case ID 417559 to remove the \$234.75
4 prepayment penalty. Since we conclude that no further adjustments are warranted and that petitioner
5 has not provided a basis for rehearing, we recommend that, with this adjustment, the petition for
6 rehearing be denied.

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8 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III

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