

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Administrative Protest and)
 Claim for Refund under the Sales and Use Tax)
 Law of:)
 ANDREW STEVEN ROGANSON, dba) Account Number SR AC 100-762518
 Design Lighting and Installations) Case ID's 538417, 737457
 Taxpayer/Claimant) Woodland Hills, Los Angeles County

Type of Business: Electrical construction contractor

Audit period: 06/08/06 – 12/31/08

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported taxable sales	\$76,708		
Failure to file penalty (2008)	\$ 214		
As determined		\$14,573.32	\$ 441.40
Finality penalty added			1,457.33
Pre-D&R adjustment		- 7,186.18	- 945.71
Post-D&R adjustment		<u>00.00</u>	<u>- 738.71¹</u>
Adjusted liability		\$7,387.14	\$ 214.31
Less concurred		<u>-1,058.72</u>	<u>00.00</u>
Balance, protested		<u>\$6,328.42</u>	<u>\$ 214.31</u>
Adjusted tax		\$7,387.14	
Interest through 06/30/14		3,111.22	
Failure-to-file penalty		214.31	
Finality penalty		<u>738.71</u>	
Total tax, interest, and penalty		\$11,451.38	
Payments		<u>- 3,500.00</u>	
Balance Due		<u>\$ 7,951.38</u>	
Monthly interest beginning 07/01/14		<u>\$ 19.44</u>	

These matters were scheduled for Board hearing in February 2014, but taxpayer did not respond to the Notice of Hearing. They were scheduled for decision on the nonappearance calendar in

¹ Since the D&R recommends conditional relief of the finality penalty, we have deleted the penalty in this portion of the table. However, in the table below, we show the finality penalty, since the conditions for relief have not yet been met, and the penalty will be included in the notice of final decision regarding this appeal.

1 March 2014, but taxpayer contacted the Board Proceedings Division and the matters were rescheduled
2 for the next Board hearing in Culver City.

3 **UNRESOLVED ISSUES**

4 **Issue 1:** Whether adjustments are warranted to the amount of unreported taxable sales. We
5 find no further adjustment is warranted.

6 Taxpayer is an electrician who designs, manufactures, and installs custom-made lighting
7 systems on real property. Taxpayer purchases materials and fixtures tax-paid, and he entered into oral
8 contracts with his customers to design and install lighting systems with no sales tax reimbursement
9 charged or collected. Taxpayer's sales invoices separately stated the amounts he charged the customer
10 for time, materials, and lighting fixtures. On his sales and use tax returns for the audit period, taxpayer
11 claimed all reported sales as nontaxable or exempt.

12 The Sales and Use Tax Department (Department) reviewed the available sales invoices and
13 computed that sales of fixtures represented 24.83 percent of total sales for 2006 and 18.58 percent of
14 total sales for 2007 and 2008. The Department applied those percentages to recorded total sales to
15 establish taxpayer's sales of fixtures. The Department then conducted a shelf test in which it computed
16 a markup of 103 percent, which taxpayer does not dispute.² The Department used the audited markup
17 to compute the cost of fixtures, which it regarded as tax-paid purchases resold. The Department
18 reduced audited sales of fixtures by the amount of tax-paid purchases resold to establish unreported
19 taxable sales of \$76,708.

20 Taxpayer contends that he is liable for tax on the cost of fixtures (which tax he paid at the time
21 of purchase), asserting that he was the consumer, not the retailer of the lighting fixtures. On that issue,
22 taxpayer asserts that he had lump-sum contracts with his customers, even though the contracts were not
23 in writing and his sales invoices were prepared on a time-and-materials basis, with no separately stated
24 amount of tax.

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27 ² The Department had computed a markup of 185 percent in the audit, but it reduced the markup to 103 percent in a pre-
28 conference reaudit, based on additional documentation provided by taxpayer.

1 First, we note that construction contractors (other than United States construction contractors)
2 are retailers, not consumers, of fixtures. Therefore, sales tax applies to a construction contractor's
3 sales of fixtures. Accordingly, taxpayer's assertion that he was the consumer of the lighting fixtures is
4 incorrect.

5 The parties agree that taxpayer did not purchase the light fixtures in a completed condition, and
6 that it was necessary for him to modify and customize every light fixture prior to installation. In
7 addition, there were no written contracts that stated the selling price of the light fixtures. Therefore,
8 the sales price is deemed to be the cost price of the fixture to the contractor. (Cal. Code Regs., tit. 18,
9 § 1521, subd. (b)(2)(B)2a.) As relevant here, because taxpayer is the manufacturer of the fixtures, the
10 cost price is deemed to be the amount stated in taxpayer's records (i.e., other records of the contractor).
11 (Cal. Code Regs., tit. 18, § 1521, subd. (b)(2)(B)2b.) There is no dispute that taxpayer's records show
12 he added a markup of 103 percent to the cost of his purchases of fixtures that were not in a completed
13 condition at the time of purchase. Further, the recorded sale price of the fixtures included taxpayer's
14 jobsite fabrication labor and a prorated share of manufacturing overhead, which must be included in
15 the sale price of fixtures manufactured by the contractor. (Cal. Code Regs., tit. 18, § 1521, subd.
16 (b)(2)(B)2.) Therefore, taxpayer owes sales tax on the difference between the tax-paid purchase price
17 of the uncompleted fixtures and the recorded sale price of the fixtures. Since the Department has
18 computed that amount using taxpayer's own records,³ we find there is no basis for adjustment.

19 Since we recommend no further adjustments to the amount of unreported taxable sales, and the
20 amount paid does not exceed the amount due, we recommend that the claim for refund (which was
21 filed April 16, 2013 and was timely for payments totaling \$700.00) be denied.⁴

22 **Issue 2:** Whether relief of the failure to file penalty is warranted. We find relief is not
23 warranted.

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26 ³ Although the figures were not transcribed directly from taxpayer's records, the Department used the available invoices to
27 compute percentages of fixtures to total sales and used information from taxpayer's records to compute the markup, which
the Department used to compute the amounts of tax-paid purchases resold.

28 ⁴ As noted in the D&R, a claim for refund is not ripe for consideration unless the tax due for one or more entire reporting
periods has been fully paid. Since the entire amount due for 2006 (approximately \$3,072) has been paid, the claim is now
ripe for consideration.

