

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 BENALEX WINDOWS & DOORS CORP.) Account Number SR AA 97-750114
 Case ID 446664
 6 Petitioner) Los Angeles, Los Angeles County

7 Type of Business: Sales of windows

8 Audit period: 07/01/04 – 06/30/07

9 Since petitioner agrees with the findings of the most recent post-hearing reaudit, there are no
 10 remaining disputed items.

	<u>Tax</u>	<u>Penalty</u>
11 As determined	\$667,763.73	\$66,776.41
12 Pre-D&R adjustment	+ 12,309.35	+ 1,230.95
Post-D&R adjustment	- 55,757.42	- 5,575.75
13 Post-Board hearing adjustment	- 287,392.29	- 28,739.21
14 Post-Board hearing adjustment, May 2014	- 20,284.57	- 2,028.44
Proposed redetermination	<u>\$316,638.80</u>	<u>\$31,663.96</u>
15 Less concurred	<u>- 316,638.80</u>	<u>- 31,663.96</u>
Balance, protested	<u>\$ 00.00</u>	<u>\$ 00.00</u>
16 Proposed tax redetermination	\$316,638.80	
17 Interest through 06/30/14	167,617.78	
Negligence penalty	<u>31,663.96</u>	
18 Total tax, interest, and penalty	\$515,920.54	
Payments	<u>-132,128.24</u>	
19 Balance Due	<u>\$383,792.30</u>	
20 Monthly interest beginning 07/01/14	<u>\$ 922.55</u>	

21 The Board held a hearing regarding this matter on February 27, 2013, granting petitioner
 22 30 days to conduct another test of nontaxable sales and the Sales and Use Tax Department
 23 (Department) 30 days to respond. Based on petitioner's submissions and the Department's response,
 24 we recommended a reduction in the amount of disallowed claimed and netted nontaxable sales of
 25 \$3,483,543, from \$4,896,656 to \$1,413,113. The matter was scheduled on the non-appearance
 26 calendar for January 2014 in Sacramento, but was postponed at petitioner's request in order for it to
 27 have an opportunity to address the Board on the day it considered this matter in Culver City. When the
 28 Board considered the matter on February 25, 2014, it granted petitioner 30 days to meet with the

1 Department. The Department now recommends further reduction of \$245,784 to the amount of
2 disallowed claimed and netted nontaxable sales, from \$1,413,113 to \$1,167,239, as explained below.
3 Since petitioner no longer protests any of the remaining issues, we have explained the findings of the
4 reaudit in the final action summary, without incorporating any portion of the Board hearing summary.
5 However, for historical reference, we have included the analysis of unresolved issues from the prior
6 Final Action Summary after the explanation of the resolved issues herein.

7 **RESOLVED ISSUES**

8 Petitioner manufactures and sells window frames, glass and screens. Petitioner did not provide
9 a general ledger or other summary records that had been completed contemporaneously with the sales,
10 and the Department established an understatement based on its review of petitioner's invoices for the
11 third quarter 2004 (3Q04). At the Board hearing on February 27, 2013, petitioner contended that the
12 error percentage of 71.62 percent derived from the test of 3Q04 was not representative of its business
13 for subsequent periods because its record keeping improved after the 4Q04. After the hearing,
14 petitioner conducted a test of nontaxable sales for 3Q06. To support the nontaxable sales, petitioner
15 provided seller's permit numbers and business information for several customers. Using that
16 information and the Board's computerized records, the Department identified sales made to purchasers
17 who held seller's permits and were engaged in the business of reselling the type of property sold by
18 petitioner, and it regarded those sales as nontaxable. For 3Q06, the Department computed an error rate
19 of 36.23 percent.

20 In addition, the Department concluded that the some of the sales that had been disallowed in
21 the test of 3Q04 were valid sales for resale, based on sales invoices, with seller's permit numbers, that
22 petitioner provided for 1Q05. Further, the Department revised the audit methodology to fully account
23 for sales regarded as taxable by petitioner, such that the percentage of error was not applied to sales
24 already included in the unreported taxable sales of \$2,616,705. As a result of that change in audit
25 methodology and the Department's conclusion that some of the previously disallowed sales for resale
26 should be accepted as valid, the Department reduced the percentage of error computed for 3Q04 from
27 71.62 percent to 43.96 percent. The Department computed an average percentage of error of
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1 40.10 percent $[(36.23\% + 43.96\%) \div 2]$. It applied that percentage of error to claimed and netted
2 nontaxable sales to compute the disallowed amount of \$1,413,113.

3 Petitioner continued to assert that the understatement should be reduced, and its representatives
4 presented its position in an address to the Board on February 25, 2014. The Board considered the
5 matter on that date and granted petitioner 30 days to provide additional documentation. Petitioner
6 subsequently met with the Department and discussed the evidence regarding the disallowed claimed
7 and netted nontaxable sales. The audit staff reviewed the matter and found that four of petitioner's
8 customers held valid seller's permits and were engaged in the business of reselling property of the kind
9 purchased from petitioner. Therefore, the Department concluded that sales to those four customers
10 were valid nontaxable sales for resale. The Department recomputed the disallowed claimed and netted
11 nontaxable sales, which resulted in a reduction of \$245,874, from \$1,413,113 to \$1,167,239. The
12 Department recommended no adjustments to the unreported taxable sales of \$2,626,705 or the
13 unreported purchases of fixed assets subject to use tax of \$54,101 (which had not been protested
14 previously).

15 We concur with the Department's findings, and we recommend a reduction of the disallowed
16 claimed and netted nontaxable sales of \$245,784, from \$1,413,113 to \$1,167,239, and a reduction of
17 the total understatement of reported taxable measure from \$4,083,919 to \$3,838,045 ($\$1,167,239 +$
18 $\$2,626,705, + \$54,101$). We recommend no further adjustments.

19 Petitioner concurs with the amount of disallowed claimed and netted nontaxable sales, and it no
20 longer disputes the audited amount of unreported taxable sales or the negligence penalty. Accordingly,
21 all matters in this appeal are resolved.

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