

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION PETITION FOR REHEARING SUMMARY

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

8 Type of Business: Electrical construction contractor

9 Audit period: 06/08/06 – 12/31/08

10 Item Disputed Amount

11 Unreported taxable sales \$76,708

11 Failure to file penalty (2008) \$ 214

	<u>Tax</u>	<u>Penalty</u>
12 As determined	\$14,573.32	\$ 441.40
13 Finality penalty added		1,457.33
14 Pre-D&R adjustment	- 7,186.18	- 945.71
14 Post-D&R adjustment	00.00	- 738.71 <sup>1</sup>
15 Post-Board hearing adjustment	<u>00.00</u>	<u>- 214.31</u>
15 Adjusted liability	\$7,387.14	<u>\$ 00.00</u>
16 Less concurred	<u>-1,058.72</u>	
16 Balance, protested	<u>\$6,328.42</u>	
17 Adjusted tax	\$7,387.14	
18 Interest through 09/30/14	3,168.04	
18 Finality penalty	<u>738.71</u>	
19 Total tax, interest, and penalty	\$11,293.89	
19 Payments	<u>- 3,600.00</u>	
20 Balance Due	<u>\$ 7,693.89</u>	
21 Monthly interest beginning 10/01/14	<u>\$ 18.94</u>	

22 The Board heard these matters on June 25, 2014, granting relief of the failure-to-file penalty  
 23 and conditional relief of the finality penalty, and ordering no further adjustments to unreported taxable  
 24 sales.<sup>2</sup> Taxpayer filed a timely petition for rehearing.

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 27 <sup>1</sup> 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.

28 <sup>2</sup> We note that the direction of the Board's order is the subject of the petition for rehearing.

**UNRESOLVED ISSUE**

**Issue:** Whether the petition for rehearing should be granted. Our recommendation is contingent on the Board’s finding regarding the clarity of the vote at the hearing, as explained below.

In this case, the petition for rehearing asserts that the Board did not directly vote on the issue of whether adjustments are warranted to the amount of unreported taxable sales.<sup>3</sup> Taxpayer asserts that the Board voted to relieve the failure-to-file penalty but did not make an order regarding adjustments to unreported taxable sales. Taxpayer asserts, therefore, that the Sales and Use Tax Department acted without direction from the Board when it redetermined the amount of tax with no further adjustments, and, on that basis, taxpayer asserts that a rehearing is warranted. Accordingly, in order to determine whether a rehearing is warranted, the Board must first consider whether the motion at the Board hearing, and the resulting vote regarding these matters, was sufficiently clear regarding the matter of unreported taxable sales.

During the consideration of this matter after it had been taken under submission, Member Mandel said, “I would move to delete the remaining penalty.” Then, there was a discussion about the nature of the remaining penalty, and Ms. Mandel continued, “Failure-to-file penalty on the grounds that he was clearly confused about a complicated subject and reported consistent with his understanding or his view that it was all materials. So I would delete the penalty and otherwise --.” The remainder of Ms. Mandel’s intended motion does not appear to have been expressly verbalized. The motion, however, was approved without objection.

Staff concluded that Ms. Mandel had intended to complete the motion with a statement such as “otherwise redetermine in accordance with the recommendation of the Appeals Division,” and staff concluded that such was the Board’s understanding and intent when it unanimously voted in favor of Member Mandel’s motion. Therefore, taxpayer was notified that the Board had granted relief of the failure-to-file penalty, had granted relief of the finality penalty if taxpayer paid the tax due within 30

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<sup>3</sup> Although not mentioned by taxpayer, if the vote is found to be unclear, it also did not address the conditional relief of the finality penalty.

1 days of the mailing of the notice of final action in this matter, and had ordered no further adjustments  
2 to the amount of unreported taxable sales.

3 Under these circumstances, the first question to be addressed is whether the motion was  
4 sufficiently clear on the record. If the Board finds that the motion was sufficiently clear, and that the  
5 Board's direction was properly understood by staff, then we recommend that the petition for rehearing  
6 be denied since taxpayer has provided no argument or evidence regarding the substantive issues in the  
7 case that has not been considered previously by the Board. On the other hand, if the Board finds that  
8 the motion was not sufficiently clear, then we recommend that the Board find that its vote on June 25,  
9 2014, was an incomplete action (i.e., that the issues of whether to grant finality penalty relief and  
10 whether any further adjustments to the amount of unreported taxable sales were effectively deferred).  
11 If such is the Board's finding, we recommend that the Board direct that the Notice of Redetermination  
12 be cancelled, with no action taken on the instant petition for rehearing, and instead direct that the  
13 appeal to be brought back for consideration and action on the next available adjudicatory calendar. If  
14 the matter is brought back, at that time, the Board could order that the prior vote be rescinded and  
15 expunged and then vote on a new motion that would clearly address all of the unresolved issues in this  
16 matter.

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