

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION PETITION FOR REHEARING 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>
Unreported taxable sales	\$76,708

	<u>Tax</u>	<u>Penalty</u>
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	00.00	- 738.71 <sup>1</sup>
Post-Board hearing adjustment	<u>00.00</u>	<u>- 214.31</u>
Adjusted liability	\$7,387.14	<u>\$ 00.00</u>
Less concurred	<u>-1,058.72</u>	
Balance, protested	<u>\$6,328.42</u>	
Adjusted tax	\$7,387.14	
Interest through 06/30/15	3,338.50	
Finality penalty	<u>738.71</u>	
Total tax, interest, and penalty	\$11,464.35	
Payments	- 3,600.00	
Balance Due	<u>\$ 7,864.35</u>	
Monthly interest beginning 07/01/15	<u>\$ 18.94</u>	

The Board heard these matters on June 25, 2014, granting relief of the failure-to-file penalty. However, with respect to the amount of unreported taxable sales and conditional relief of the finality penalty, the Board's order was not expressly verbalized, since the last few words of the motion were not directly stated. Based on its understanding of the not-fully-complete motion, the Sales and Use

<sup>1</sup> Since the Board has granted 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 Tax Department (Department) issued a Statement of Liability Balances, making no further adjustment  
2 to the amount of unreported taxable sales, deleting the failure-to-file penalty, and granting conditional  
3 relief of the finality penalty. Taxpayer filed a timely Petition For Rehearing (PFR), asserting that the  
4 Board did not directly vote on the issue of whether adjustments are warranted to the amount of  
5 unreported taxable sales and, thus, that the Department acted without direction from the Board when it  
6 redetermined the amount of tax with no further adjustments.

7 On September 23, 2014, the Board considered the PFR and found that the motion made on  
8 June 25, 2014, was not sufficiently clear, and that its June 25, 2014 vote was an incomplete action.  
9 Accordingly, the Board directed that the appeal be brought back for consideration at the October 2014  
10 meeting. At the meeting on October 14, 2014, the Board voted to rescind and expunge its prior vote.  
11 The Board then expressly voted on the record to grant relief of the failure-to-file penalty and to grant  
12 conditional relief of the finality penalty, and to make no additional adjustments to the unreported  
13 taxable measure. Taxpayer then filed a second timely PFR.

#### 14 UNRESOLVED ISSUE

15 **Issue:** Whether the petition for rehearing should be granted. We recommend that it be denied.

16 In the PFR, taxpayer reiterates the arguments from his first PFR and appears to argue that the  
17 Board did not properly consider his request to reduce the taxable measure during its October 14, 2014  
18 Board meeting. Therefore, taxpayer argues that the Board violated his rights pursuant to the taxpayer  
19 bill of rights. In addition, the PFR alleges that taxpayer has additional evidence to support his  
20 assertion that reductions are warranted.

21 We first address taxpayer's assertion that his rights were violated during both Board hearings.  
22 For the hearing on June 25, 2014, taxpayer asserts that his rights were violated because the Board did  
23 not directly vote on the issue of whether adjustments were warranted to the amount of unreported  
24 taxable sales, and the Department took action without precise direction from the Board. For the  
25 Board's consideration of this matter during the Board hearing on October 14, 2014, taxpayer states that  
26 his rights were violated because the Board voted to rescind and expunge the prior vote, and then voted  
27 on the appeal without reexamining all of the evidence regarding taxpayer's arguments.  
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1 We find that, during the June 25, 2014 hearing, the Board carefully considered all available  
2 evidence and testimony regarding taxpayer's request to reduce the taxable measure. Although it is true  
3 that the Board's order at that hearing was not expressly verbalized, that issue was rectified during the  
4 October 14, 2014 Board meeting when the Board unanimously voted to rescind and expunge the prior  
5 vote. The Board then voted on the appeal, granting relief of the failure-to-file penalty and conditional  
6 relief of the finality penalty, and ordering no further adjustment to the unreported taxable sales. Thus,  
7 any alleged, perceived, or potential violation of rights was abundantly and compellingly remedied  
8 during the October 14, 2014 Board meeting, based on all the facts, evidence and testimony in the  
9 record at that time. In short, there is no violation of rights, nor error of fact or law.

10 Further, at the time of the October 14, 2014 Board meeting, taxpayer had presented no new  
11 evidence, and the Board had already carefully considered all of the evidence and the issues at the prior  
12 hearing, so there was no reason for the Board to reexamine the evidence or the issues. Therefore, we  
13 find there was no irregularity that prevented the Board from fair consideration of taxpayer's appeal,  
14 and no accident or surprise that was not rectified at the October 14, 2014 Board meeting.

15 Regarding the additional evidence provided after the October 14, 2014 Board meeting, the  
16 Department has thoroughly reviewed all material provided by taxpayer. Taxpayer has provided  
17 revised sales summaries with notations related to bad debts and fixtures sales for 2006, 2007, and  
18 2008, along with sales invoices for the same years. The Department has determined that the  
19 documents, which had not been previously provided, support an increase in the determined  
20 understatement of reported taxable measure, but the Department has declined to prepare a reaudit to  
21 assert an increase.

22 Accordingly, we conclude no further adjustment is warranted. We further conclude that the  
23 Board reached the correct decision at the October 14, 2014 Board meeting, and that taxpayer has not  
24 provided any basis to support a rehearing. Accordingly, we recommend that the PFR be denied.

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