

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION PETITION FOR REHEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 FENCE AMERICA, INC.) Account Number SR KH 100-332144
 6 Petitioner) Case ID 479354
) Sacramento, Sacramento County

7 Type of Business: Construction contractor

8 Audit period: 01/01/04 – 12/31/06

9 Item Disputed Amount

10 Unreported taxable measure \$4,909,213

11 Tax as determined \$325,613.09

12 Post-D&R adjustment¹ +100,363.92

13 Post-Board hearing adjustment - 14,222.16

14 Proposed redetermination \$411,754.85

15 Less concurred - 50,410.08

16 Balance, protested \$361,344.77

17 Proposed tax redetermination \$411,754.85

18 Interest through 07/31/13 265,797.5019 Total tax and interest \$677,552.3520 Monthly interest beginning 08/01/13 \$ 2,058.77

21 The Board held a hearing regarding this matter on May 30, 2012, granting petitioner 30 days to
 22 provide additional records and the Sales and Use Tax Department 30 days to respond. The matter was
 23 then presented to the Board on a nonappearance calendar on November 14, 2012. The Board
 24 concluded that petitioner owed tax at the time of purchase with respect to the fencing materials it
 25 consumed and is thus liable for tax on the cost of those materials, without any adjustment for spoilage,
 26 theft, or inventories; and adjustments are warranted for spoilage with respect to the cost of materials
 27 petitioner sold, for tax-paid purchases resold, and for excludable transportation charges. Based on
 28 these conclusions, the Board ordered the tax redetermined to \$411,754.85. Petitioner filed a timely
 petition for rehearing.

¹ The Department asserted this increase in the determination pursuant to Revenue and Taxation Code section 6563 by letter dated September 30, 2010.

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UNRESOLVED ISSUE

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

In the petition for rehearing, petitioner states there is insufficient evidence to justify the Board’s decision and that the Board’s decision is contrary to law. Petitioner has provided no argument or evidence that has not been fully considered by the Board. We conclude that the Board correctly decided this matter, and petitioner has not presented a basis for rehearing. We thus recommend that the petition for rehearing be denied.

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