STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

# CALIFORNIA STATE BOARD OF EQUALIZATION

## APPEALS DIVISION PETITION FOR REHEARING SUMMARY

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| In the Matters of the Administrative Protest and Claim for Refund Under the Sales and Use Tax Law of: | |
| MEDIA MANAGEMENT SERVICE, INC., dba Quality Outdoor Advertising | Account Number: SR EA 97-741075<br>Case ID's 294859 and 391611 |
| Taxpayer/Claimant | Orange, Orange County |

Type of Business: Construction contractor

Audit period: 06/01/00 - 3/31/03

Claim period: 01/01/01 – 12/31/01

| Item | Disputed Amount |
|---|---|
| Unreported purchases of materials consumed | $764,007 |
| Finality penalty | $ 5,962 |
| Amnesty double finality penalty | $ 5,889 |
| Amnesty interest penalty | $ 7,674 |
| Claimed refund of tax | $ 27,063 |

| | Tax | Penalty |
|---|---|---|
| As determined and redetermined: | $59,617.64 | |
| Finality penalty | | $ 5,961.76 |
| Amnesty double finality penalty | | $ 5,888.84 |
| Amnesty interest penalty | | $ 7,674.33 |
| Protested | $59,617.64 | $19,524.93 |

| | |
|---|---|
| Tax, as redetermined | $ 59,617.64 |
| Interest through 11/30/11 | 49,384.84 |
| Finality penalty | 5,961.76 |
| Amnesty double finality penalty | 5,888.84 |
| Amnesty interest penalty | 7,674.33 |
| Total tax, interest, and penalty | $128,527.41 |
| Payments | - 1,074.39 |
| Balance Due | $127,453.02 |
| Monthly interest beginning 12/1/11 | $ 292.72 |

The Board heard these matters on April 27, 2011, and concluded that taxpayer was a consumer of materials it purchased to furnish and install in the performance of a construction contract, and that taxpayer thus owed use tax on its purchase price even though some of the materials were not installed.

Accordingly, the Board ordered no adjustment to the determined liability and ordered the claim for refund denied. Taxpayer filed a timely petition for rehearing, which was scheduled for decision on the consent calendar in September 2011, and was pulled from that calendar by Member Runner.

**UNRESOLVED ISSUE**

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

Taxpayer's request for rehearing is based in large part on the dispute surrounding its contract to furnish and install the subject outdoor advertising signs. Although the focus of the discussion during the Board hearing was whether the subject property was materials or fixtures, taxpayer did also cover the dispute surrounding the contract, and the change in State law leading to that dispute. In any event, taxpayer entered into a construction contract to furnish and install outdoor advertising signs. Taxpayer then contracted in its own name to purchase the necessary property, which the vendor delivered to taxpayer. Since the property constituted materials that taxpayer acquired to furnish and install pursuant to its lump sum construction contract, taxpayer acquired the property as a consumer. This is what the Board held, and taxpayer does not dispute this finding in its petition for rehearing. That the project in large part fell through before taxpayer completed the construction does not alter the fact that taxpayer had already incurred the tax liability at issue here. We conclude that the Board correctly decided these matters, and taxpayer has not presented a basis for rehearing. We thus recommend that the petition for rehearing be denied.

Summary prepared by Thea C. Etheridge Business Taxes Specialist II