

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Claim for Refund)	
4 Under the Sales and Use Tax Law of:)	
5 EVA MARIE TICE)	Account Number SA V UT 84-104249
6 Claimant)	Case ID 484005
	Glendora, Los Angeles County

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8 Type of Transaction: Purchase of motor home

9 Date of purchase: 09/17/04

<u>Item</u>	<u>Claimed Refund</u>
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10 Use tax paid on purchase	\$10,395
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Requests for Relief

12 Finality penalty	\$1,039.50
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13 Interest	\$2,041.83 ¹
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14 Claimant filed a claim for refund for tax of \$10,395.00, which she paid against a Notice of
15 Determination for use tax due with respect to the purchase of a motor home for \$126,000. In addition,
16 claimant has requested relief of the finality penalty and interest, which amounts have not been paid.

17 This matter was scheduled for Board hearing in February 2014, but was postponed at
18 claimant's request due to a family emergency. It was rescheduled for Board hearing in June 2014, but
19 was postponed at claimant's request due to a medical emergency.

UNRESOLVED ISSUES

21 **Issue 1:** Whether use tax applies to claimant's purchase of the motor home. We find that
22 claimant purchased the motor home for use in California, and use tax applies.

23 On September 17, 2004, claimant and her husband² purchased a motor home from a dealer in
24 Oregon. On December 27, 2004, claimant filed a request for a certificate of use tax clearance with the

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26 ¹ The interest of \$2,041.83 is net of \$1,518.55, which represents interest for the period February 1, 2005, through
27 October 26, 2006, and \$381.16, which represents interest that the Department has relieved for the period July 1, 2007,
through October 31, 2007.

28 ² Although the motor home was purchased by both claimant and her husband, the Notice of Determination was, for
unknown reasons, issued to claimant only.

1 Sales and Use Tax Department (Department), on the basis that she purchased the motor home for use
2 in Oregon. Claimant stated that the motor home had remained in Oregon since the time of purchase
3 and had not entered California. Claimant also indicated that she was registering the motor home for
4 the first time and planned on using it outside California more than half the time. The Department
5 issued a use tax clearance certificate authorizing claimant to register the vehicle with the California
6 DMV without payment of use tax at the time of registration. In its cover letter, the Department
7 requested documentation to support the exemption or exclusion from use tax.

8 Since claimant did not provide the requested documentation, the Department issued a Notice of
9 Determination (NOD) for tax, based on the purchase price of \$126,000. Claimant did not timely pay
10 the NOD or file a petition for redetermination. Claimant filed a late appeal, which the Department did
11 not accept as an administrative protest. Claimant then paid the tax and filed a timely claim for refund.

12 Claimant contends the purchase of the motor home is not subject to use tax because she
13 purchased the motor home for use in Oregon. Claimant has stated that she drove the motor home in
14 Oregon on the date of purchase and that the motor home was subsequently parked at her sister's house
15 in Oregon for 14 months. During that period, claimant has stated that her mother-in-law used the
16 motor home as her residence. On another occasion, claimant stated to the Department that her brother
17 lived in the motor home in Oregon while his house was being constructed.

18 It is undisputed that claimant purchased the motor home from an Oregon seller, who was not
19 licensed as a vehicle dealer in California. Therefore, if any tax is due on this transaction, it is use tax
20 for which claimant is liable. Claimant's contentions are inconsistent, and some of the material facts of
21 the case remain unclear; nevertheless, we note that the odometer reading was 2,412 miles on the date
22 of purchase, September 17, 2004, and was the same (2,412 miles) on the documents claimant filed to
23 register the motor home in California on January 24, 2005. In response to our inquiry regarding the
24 mileage, claimant has explained that the odometer reading remained the same because she took
25 delivery of the motor home in California. Accordingly, the uncontroverted odometer reading appears
26 to be the only fact on which we can confidently rely, and it appears to have remained unchanged from
27 the date of purchase to the date of registration in California, by claimant's own admission.

28 Accordingly, based on that fact, we find that the motor home was first functionally used in California,

1 and claimant has provided no evidence to the contrary. Thus, the motor home is regarded as having
2 been purchased for use in California, and the purchase is subject to use tax. (Cal. Code Regs., tit. 18, §
3 1620, subd. (b)(4).)

4 Although not addressed in the D&R, from an abundance of caution we note that if claimant
5 were to establish that first functional use of the motor home occurred outside this state, then the 90 day
6 test would apply based on the purchase date of September 17, 2004. (Cal. Code Regs., tit. 18, § 1620,
7 subd. (b)(4).) Under the 90 day test, a vehicle is presumed to be purchased for use in California if it
8 enters California within 90 days from the date of purchase, exclusive of time of storage for shipment in
9 California. In this case, Claimant has stated that the motor home was parked at an address in Oregon
10 prior to entry into California. Claimant has variously asserted that a variety of people lived in the
11 motor home when it was parked at the Oregon address. Claimant, however, has not provided any
12 documentary evidence to support that the motor home was used in Oregon for any purpose other than
13 storage for shipment to California. Therefore, even if claimant were to establish that the motor home
14 was first functionally used outside this state, it is presumed to have been purchased for use in
15 California and tax applies.

16 **Issue 2:** Whether claimant is entitled to relief based upon reasonable reliance on written advice
17 from the Board. We find no basis for relief.

18 Claimant filed for and received a use tax clearance certificate for the motor home from the
19 Department, which was accompanied by a cover letter that requested documentation to support the
20 claimed exemption or exclusion from the use tax. Claimant has filed a request for relief from the use
21 tax on the basis that her failure to pay the use tax was the result of her reliance on the use tax clearance
22 and cover letter. Claimant also asserts that a Board employee orally informed her that use of the
23 vehicle in Oregon by her mother-in-law was sufficient to establish an exclusion from use tax.

24 We first note that there is no statutory provision for relief from tax based on oral advice. With
25 respect to written advice, we find that the clearance certificate and cover letter do not state that
26 claimant's purchase of a motor home was not subject to use tax. Instead, the cover letter specifically
27 explains that documentation is required to support the claimed exemption or exclusion and that the
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1 claim will be denied if the documentation is not provided. Accordingly we conclude that relief from
2 the tax is not warranted pursuant to Revenue and Taxation Code section 6596.

3 **Issue 3:** Whether relief of the finality penalty is warranted. We find that relief is not
4 warranted.

5 Claimant has requested relief from the finality penalty on the basis that she timely filed a
6 petition for redetermination of the NOD, since the petition was signed and dated on November 2, 2007.
7 Alternatively, if the postmark is used to establish the date of filing, claimant asserts that the petition
8 should be accepted as timely because it was only 12 days late. Further, claimant states that, since the
9 Department failed to respond to her in a timely manner, she should not be required to respond to the
10 NOD within 30 days.

11 There is no evidence or argument that claimant did not timely receive the NOD. In fact,
12 claimant called the Department on October 24, 2007, to inquire about the basis for the NOD. The
13 NOD specifically explained that the last day for filing a timely petition for redetermination was
14 November 2, 2007. However, while the date on the petition for redetermination was November 2,
15 2007, the postmark showing the date of mailing was November 14, 2007. The fact that the appeal was
16 dated November 2, 2007, strongly indicates that claimant understood the liability would become final
17 if the petition were not filed by that date. Nevertheless, claimant failed to timely pay the liability or
18 file the petition, and she has not explained the reason for her failure to do so. Accordingly, we find
19 that claimant's failure to timely pay the liability or file a petition for redetermination was not due to
20 reasonable cause, and relief of the finality penalty is not warranted.

21 **Issue 4:** Whether relief of interest is warranted. We find no further relief of interest is
22 warranted.

23 Interest accrued on this liability from February 1, 2005, through December 8, 2008, when
24 claimant paid the determined tax. Claimant has filed a request for relief of all interest, arguing that the
25 matter should have been resolved within six months from the date she filed a request for a use tax
26 clearance certificate. Further, claimant states that the matter remains unresolved, more than eight years
27 later, due to the Department's unreasonable delay.

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1 As a general comment, we find that much of the delay in processing this matter was the result
2 of the claimant's delays. However, the Department has conceded that it made an error on
3 December 27, 2004, by issuing the use tax clearance certificate to claimant and advising her to provide
4 supporting documentation at a later date. The Department states that its internal policy in cases such as
5 this, where a significant amount of time has lapsed since the date of purchase, is to request the
6 documentation before issuing the use tax clearance certificate. Thus, the Department erred in issuing
7 the use tax clearance and informing claimant she had additional time to provide the documentation.
8 The Department notes, however, that it notified claimant, in a letter dated October 27, 2006, that the
9 claim for exemption or exclusion from use tax would be denied if the documentation were not
10 provided. Accordingly, the Department finds that there was an unreasonable error or delay on the part
11 of a Board employee for the period December 27, 2004, through October 27, 2006. Under the unique
12 facts of this case, we concur with the Department's conclusion, and we have recommended relief of
13 interest for the period February 1, 2005 (when interest began to accrue), through October 26, 2006.

14 In addition, the Department advises that it mailed the first two NOD's in this matter to an
15 incorrect address. Therefore the Department now concedes an unreasonable delay from the date of the
16 first NOD (July 11, 2007) to the date that the NOD was mailed to taxpayer's correct address
17 (October 3, 2007) and it recommends \$381.16 in interest relief (computed from July 1, 2007 through
18 October 31, 2007.) We concur.

19 With respect to the remaining periods from October 27, 2006, through December 8, 2008, when
20 claimant paid the liability, we find there is no evidence of unreasonable error or delay by an employee
21 of the Board, and we recommend no further relief of interest.

22 OTHER MATTERS

23 None.

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25 Summary prepared by Lisa Burke, Business Taxes Specialist III
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