

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)

NIKOLAY LOMOV)

Petitioner)

Account Number SA B UT 84-198630
Case ID 781912
Antelope, Sacramento County

Type of Transaction: Purchase of a truck

Date of Transaction: 02/08/13

<u>Item</u>	<u>Disputed Amount</u>
-------------	------------------------

Purchase of a truck	\$14,000 ¹
---------------------	-----------------------

	<u>Tax</u>	<u>Penalty</u>
As determined	\$1,120.00	\$112.00
Post-D&R adjustment	<u>00.00</u>	<u>- 112.00</u>
Proposed redetermination, protested	<u>\$1,120.00</u>	<u>\$ 00.00</u>
Proposed tax redetermination	\$1,120.00	
Interest	<u>151.20</u>	
Total tax and interest	\$1,271.20	
Payments	<u>- 1,265.60</u>	
Balance Due	<u>\$ 5.60</u>	

UNRESOLVED ISSUE

Issue: Whether petitioner's purchase and use of the vehicle in California is subject to use tax.

We find that the use tax applies.

Petitioner, a California resident, purchased the vehicle on February 8, 2013, from Ashok Kumar, who delivered the vehicle to petitioner in Antelope, California. There is no evidence (or argument) that the seller held or was required to hold a California seller's permit. Thus, if any tax is due on this transaction, it will be use tax for which petitioner is liable.

¹ We note that petitioner stated at the conference that he purchased the truck for \$19,000. However, the Sales and Use Tax Department is not asserting an increase in the tax liability.

1 According to petitioner, after he took delivery of the vehicle, he stored it in Antelope,
2 California, and subsequently registered the vehicle in the International Registration Plan (IRP).² As a
3 result, the Department of Motor Vehicles (DMV) issued petitioner an Apportioned Registration Cab
4 Card. Petitioner did not pay sales tax reimbursement or use tax in connection with the purchase.

5 On May 28, 2013, the vehicle was dispatched from Antelope, California to pick up freight in
6 Union City, California and then deliver that freight to St. Louis, Missouri (on or about May 31, 2013).
7 On or about June 1, 2013, petitioner picked up another load of freight in Missouri, which he delivered
8 to Antioch, California on June 3, 2013.

9 Based on information received from DMV, the Sales and Use Tax Department (Department)
10 determined that petitioner's purchase and use of the vehicle are subject to use tax.

11 Petitioner contends that the vehicle is exempt from use tax because he registered the vehicle in
12 the IRP (and thus did not register the vehicle in California) and because he obtained a "Title Only"
13 certificate (issued when a vehicle will not be driven, moved or operated so as to cause registration fees
14 to become due). As supporting evidence, petitioner has provided various emails from a manager in
15 DMV's IRP Policy Department, indicating that a vehicle registered in IRP may obtain a Title Only
16 Certificate and then is not subject to use tax.

17 There is no dispute that petitioner is a California resident and that he purchased and took
18 delivery of the vehicle in California, and therefore that purchase in this state is subject to use tax.
19 (Rev. & Tax. Code, § 6201.) Additionally, although the foregoing is dispositive, we note there is no
20 dispute that the vehicle was located in California when it was first dispatched to pick up freight in
21 California to deliver to Missouri. This first dispatch was the first time the vehicle was used for its
22 intended purpose (i.e., to haul freight), and thus constitutes the first functional use in this state.

23
24
25
26
27 ² According to the DMV, IRP is an optional method of registering vehicles operated in interstate commerce, and consists of
28 the participating states in the United States and participating provinces in Canada, and allows for apportioned registration
fees in each participating jurisdiction in which the vehicles are operated and subject to registration, based on the percentage
of time the vehicles are operated in the participating jurisdiction.

1 Accordingly, petitioner is regarded as having purchased the vehicle for use in California, and such use
2 is subject to tax absent an exemption or exclusion. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(A).)³

3 Petitioner contends that his purchase and use of the vehicle is exempt from use tax because the
4 vehicle is used in interstate commerce. However, the interstate commerce exemption is not applicable
5 in this case because petitioner took delivery of the vehicle in California. Further, petitioner first
6 functionally used the vehicle in California and is thus unable to satisfy the requirement that the vehicle
7 be used in interstate commerce prior to its entry into California.

8 We acknowledge that DMV is not required to collect use tax if a vehicle is registered in IRP
9 and DMV issues a “Title Only” certificate. However, a vehicle that is purchased and first functionally
10 used in California is not exempt from use tax merely because it is registered in IRP. Instead, the
11 purchaser is required to file a return and remit the use tax unless he or she has paid use tax to a retailer
12 required to collect use tax. (Rev. & Tax. Code, § 6452, subd. (b)(1).)⁴

13 **RESOLVED ISSUE**

14 The Department included a negligence penalty in the Notice of Determination. However, after
15 the appeals conference, the Department concluded that petitioner’s failure to remit the tax was the
16 result of reasonable confusion, rather than negligence. Therefore, the Department recommended that
17 the penalty be deleted. We concur, and we recommended in the D&R that the penalty be removed.

18 **OTHER MATTERS**

19 None.

20
21 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III
22
23
24

25 ³ Petitioner argues that Regulation 1620 is not applicable because the vehicle was registered in IRP and thus was not
26 registered in California. However, petitioner’s argument is simply based on an incorrect interpretation of the regulation,
since it is the location of purchase and the location of use that determine whether the use tax applies to the transaction.

27 ⁴ Regarding the emails from a manager in DMV’s IRP Policy Department, we note that there is no evidence that the DMV
28 manager was aware that the vehicle had been or would be purchased in California. Moreover, when we discussed this
matter with the DMV manager, she stated that a vehicle registered in IRP is generally exempt from use tax if the vehicle is
purchased out-of-state. She further noted that, when someone registers a vehicle in IRP, the vehicle is usually purchased
out-of-state. Thus, it appears that she incorporated that assumption into her replies to petitioner regarding use tax.