

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:)

VALERIY POPOV)

Petitioner)

) Account Number SA B UT 84-198520
) Case ID 790387
) Sacramento, Sacramento County

Type of Transaction: Purchase of a truck

Date of Transaction: 01/30/13

<u>Item</u>	<u>Disputed Amount</u>
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Purchase of a truck	\$18,000
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	<u>Tax</u>	<u>Penalty</u>
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As determined	\$1,440.00	\$144.00
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Post-D&R adjustment	<u>00.00</u>	<u>- 144.00</u>
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Proposed redetermination, protested	<u>\$1,440.00</u>	<u>\$ 00.00</u>
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Proposed tax redetermination	\$1,440.00	
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Interest through 10/31/15	<u>216.00</u>	
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Total tax and interest	<u>\$1,656.00</u>	
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Monthly interest beginning 11/01/15	<u>\$ 7.20</u>	
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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 January 30, 2013, from Sukhwinder Singh, who delivered the vehicle to petitioner in San Leandro, 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.

According to petitioner, after he took delivery of the vehicle in San Leandro, he drove it to Sacramento, California, where he stored the vehicle. Petitioner subsequently registered the vehicle in

1 the International Registration Plan (IRP).¹ As a result, the Department of Motor Vehicles (DMV)
2 issued petitioner an Apportioned Registration Cab Card. Petitioner did not pay sales tax
3 reimbursement or use tax in connection with the purchase.

4 On February 22, 2013, the vehicle was dispatched to pick up freight in Sacramento and deliver
5 it to Ontario, California. Petitioner then drove the vehicle to San Bernardino, California, and picked up
6 another loaded trailer which he delivered to Madison, Illinois. Petitioner thereafter picked up a load of
7 freight in Edwardsville, Illinois, which he delivered to Tracy, California on March 1, 2013.

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

10 Petitioner contends that the vehicle is exempt from use tax because he registered the vehicle in
11 the IRP (and thus did not register the vehicle in California) and because he obtained a "Title Only"
12 certificate (issued when a vehicle will not be driven, moved or operated so as to cause registration fees
13 to become due). Further, petitioner contends that the purchase is exempt from use tax because he used
14 the vehicle in interstate commerce. As supporting evidence, petitioner has provided various emails
15 from a manager in DMV's IRP Policy Department, indicating that a vehicle registered in IRP may
16 obtain a Title Only 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. Clearly, the purchase of a vehicle from a private party that occurs
19 in this state is subject to use tax, absent an applicable exemption or exclusion. (Rev. & Tax. Code, §§
20 6201, 6282.) In addition, although the foregoing is dispositive of this appeal, we note that there is no
21 dispute that the vehicle was located in California when it was first dispatched to pick up freight in
22 Sacramento which was delivered to Ontario. This first dispatch was the first time the vehicle was used
23 for its intended purpose (i.e., to haul freight), and thus constitutes the first functional use in this state.

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27 ¹ 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).)²

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).)³

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.

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21 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III
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25 ² Petitioner argues that Regulation 1620 is not applicable because the vehicle was registered in IRP and was thus 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 ³ 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.