

UNRESOLVED ISSUES

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2 **Issue 1:** Whether a reduction is warranted to the amount of use tax due on claimant's purchase
3 of a vehicle. We conclude that no reduction is warranted.

4 Claimant held a seller's permit (SR AA 100-075826) to operate a used car dealership from
5 August 2002 through September 2007. On May 12, 2007, claimant purchased the subject vehicle for
6 resale for \$26,500. On March 19, 2008, claimant signed the vehicle's Certificate of Title, and on
7 March 20, 2008, filed an Application for Transfer by New Owner with the California Department of
8 Motor Vehicles (DMV), registering the vehicle in his own name and reporting a vehicle purchase price
9 of \$7,999. On April 2, 2010, the Business Tax and Fee Department (Department), formerly the Sales
10 and Use Tax Department, obtained a Vehicle Source Information Report from DMV, which shows that
11 claimant purchased the vehicle for \$26,500, but remitted use tax based on a reported purchase price of
12 \$7,999. Based on the report, the Department concluded that claimant owes use tax on the difference
13 between the actual vehicle purchase price and the reported purchase price, and issued a Notice of
14 Determination for tax on the unreported purchase price of \$18,501 (\$26,500 - \$7,999).

15 Claimant concedes that his use of the vehicle is subject to tax, but contends that the use tax due
16 should be measured by a value of \$7,999 at the time he registered it. According to claimant, the
17 vehicle had substantially declined in value from the time he purchased it until he registered it, and also
18 claims that he purchased the vehicle as a Mercedes CL600, when the vehicle actually was a Mercedes
19 CL500. Alternatively, claimant states that he resold the vehicle shortly after purchasing it, but was
20 forced to return the vehicle to his inventory when the funds he received from the sale of the vehicle did
21 not clear, and claims that he later sold the vehicle to himself for \$7,999 because he was unable to sell it
22 to anyone else prior to the termination of the business. Lastly, claimant contends that at the time he
23 registered the vehicle, he was not a licensed vehicle dealer, and as a result, no additional tax is due
24 because California Code of Regulations, Title 18, section (Regulation) 1669.5, subdivision (a)(D)(8),
25 applies only to licensed vehicle dealers.⁴

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27 ⁴ Regulation 1669.5, subdivision (a)(D)(8), requires a licensed vehicle dealer to pay use tax measured by the purchase price
28 of the vehicle, upon registering a vehicle purchased for resale in other than the name of the dealership.

1 We note that Regulation 1669, subdivision (a), expressly states that, without exception, a
2 purchaser must include in the measure of tax the full purchase price of property withdrawn from resale
3 inventory for personal use. Therefore, regardless of the vehicle's fair market value at the time of
4 registration, we find that the use tax due was measured by the price claimant paid for the vehicle.
5 According to claimant, he sold the vehicle, but was forced to return the vehicle to his inventory, and
6 then he resold the vehicle to himself for \$7,999. We note that the vehicle's Certificate of Title shows
7 no intervening transfers of title between claimant's purchase of the vehicle for resale and his
8 registration of the vehicle for personal use, which indicates that claimant did not sell the vehicle to a
9 customer as he alleges. In the absence of documentary evidence showing that claimant sold the
10 vehicle to a customer, we conclude that the vehicle was not used, other than for demonstration and
11 display, from the time claimant purchased the vehicle until he withdrew it from his resale inventory.
12 With respect to claimant's contention that he sold the vehicle to himself for \$7,999, we note that a sale
13 denotes a change of ownership, and since claimant already owned the vehicle through his business,
14 claimant could not have sold the vehicle to himself. Lastly, we agree with claimant that Regulation
15 1669.5 is not applicable in this instance because claimant was not a licensed vehicle dealer at the time
16 he withdrew the vehicle from resale inventory for personal use. However, based on our finding that
17 claimant owes use tax pursuant to section 6244, subdivision (a), and Regulation 1669, rather than
18 Regulation 1669.5, we conclude that, when claimant withdrew the vehicle from his resale inventory for
19 personal use, he owed use tax measured by the price he paid for the vehicle. We note that it is
20 undisputed that claimant purchased the vehicle for \$26,500, and remitted use tax based on a reported
21 price of \$7,999, and we find that use tax was properly assessed on the difference of \$18,501.

22 **Issue 2:** Whether relief of the finality penalty is warranted. We find that no relief is warranted.

23 A 10-percent penalty of \$143.50 was added to claimant's liability because claimant failed to
24 pay the tax before the liability became final. In a statement signed under penalty of perjury requesting
25 relief of the finality penalty, claimant states that he disputes the determination because the determined
26 tax was not applicable under Regulation 1669.5. Claimant also asserts that he asked to speak to a
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1 supervisor but was not afforded an opportunity to do so for three years.⁵ Lastly, claimant argues that
2 the Notice of Determination (NOD) was not mailed to his current address of record, and he did not
3 receive it.

4 We find that claimant's contentions that he disputes the NOD because tax is not due under
5 Regulation 1669.5, and that he was not afforded an opportunity to speak to a supervisor do not explain
6 why he was unable to timely pay the determined tax or to timely file a petition for redetermination.
7 We note that claimant currently holds a seller's permit, which was effective beginning February 1,
8 2011, and that his mailing address on that permit is the same as the address to which the NOD was
9 mailed. Further, claimant confirmed by email dated September 16, 2015, that the current address of
10 record was his residence. Thus, we find that the NOD was mailed to claimant's current address of
11 record, which was also his residence. Since there is no evidence that claimant did not receive the
12 NOD, or was otherwise precluded from either timely paying the determined tax or filing a petition, we
13 conclude that relief of the finality penalty is not warranted.

14 **Issue 3:** Whether relief of interest is warranted for the periods August 1, 2008, through
15 August 17, 2010, and September 15, 2011, through May 30, 2014. We find that additional relief of
16 interest is not warranted.

17 In a statement signed under penalty of perjury, claimant requests relief from accrued interest of
18 \$708.52, which represents the total amount that accrued from May 12, 2007, through May 30, 2014.
19 In his statement, claimant contends that he is entitled to relief of interest because he does not owe the
20 tax, and because his appeal was not handled in a timely manner.

21 The Department recommended that interest be relieved for the period August 18, 2010, through
22 September 14, 2011, due to an inadvertent lapse in communication with claimant during this time
23 period, and also recommended that all of the interest that had accrued prior to August 1, 2008, be
24 deleted based on its concession that the tax was due in April 2008, and that interest should not begin to
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26 ⁵ The Board's records indicate that, on September 14, 2011, the Department contacted claimant and informed him that he
27 owed use tax based on the vehicle purchase price of \$26,500. Claimant asked to speak to a supervisor, and the next day, on
28 September 15, 2011, a Department supervisor called claimant and left a message. Thus, we reject claimant's assertion that
he was not afforded an opportunity to speak with a supervisor for three years.

1 accrue until the last day of the month following the quarterly period for which the tax was due. We
2 concurred with the Department's recommendation, and interest of \$270.19 was relieved, such that the
3 amount of accrued interest that remains was reduced to \$438.33 (\$708.52 - \$270.19).

4 As discussed above, we reject claimant's assertion that the determined tax was not due.

5 Regarding claimant's argument that his appeal was not handled in a timely manner, we note that
6 claimant paid all but \$74.09 of the tax on April 1, 2014, prior to filing his claim for refund on April 14,
7 2014, and paid the tax balance of \$74.09 on May 30, 2014. While we reject claimant's contention that
8 his appeal was not handled in a timely manner, we find that only \$0.37 of interest accrued after
9 claimant had filed the claim for refund, and conclude that no delay in handling the appeal could have
10 resulted in additional accrual of interest.

11 In considering whether there was any unreasonable delay during the period August 1, 2008,
12 when interest began to accrue, and August 17, 2010, we note that the Department received the Vehicle
13 Source Information Report from DMV on April 2, 2010, and issued the NOD to claimant on May 6,
14 2010. We find that one month for the Department to review and process the information obtained from
15 DMV before issuing the NOD is reasonable, and conclude that there was no unreasonable delay in
16 issuing the NOD. Since claimant first contacted the Department on August 18, 2010, to dispute the
17 liability, we find that any delay from May 6, 2010, to August 17, 2010, was attributable solely to
18 claimant. As noted above, interest has been relieved for the period August 18, 2010, through
19 September 14, 2011. On September 14, 2011, the Department contacted claimant and discussed his
20 liability. Claimant asked to speak to a supervisor, and a supervisor called claimant and left him a
21 message the next day. On October 11, 2011, claimant again contacted the Department, and the
22 Department advised claimant of his appeal rights and sent him a form for filing a claim for refund.
23 Claimant did not contact the Department again until November 22, 2013, when he stated that he
24 believed the liability had been deleted. Since claimant failed to pay the liability based on his erroneous
25 and unfounded belief that his liability had been deleted, we find that any delay during this period was
26 attributable solely to claimant. During the period November 22, 2013, through May 30, 2014, the date
27 claimant paid the liability in full, the Department maintained constant contact with claimant and spoke
28 with him 13 times in order to explain the basis for its assessment, claimant's appeal rights, and request

1 payment of the liability. Accordingly, we find that there was no unreasonable delay on the part of the
2 Department, and conclude that no additional relief of interest is warranted.

3 **RESOLVED ISSUE**

4 The Department imposed a negligence penalty because claimant failed to report the full
5 purchase price of the vehicle to DMV upon registration. Claimant contends that he was not negligent
6 because he was proactive in attempting to resolve the disputed liability. We found that claimant's
7 mistaken belief that the applicable tax should be measured by the alleged fair market value of the
8 vehicle at the time of registration was likely the result of a lack of knowledge or misunderstanding of
9 the Sales and Use Tax Law, and recommended that the negligence penalty be deleted.

10 In addition to recommending that interest be relieved for the period August 18, 2010, through
11 September 14, 2011, due to an inadvertent lapse in communication during that period, the Department
12 recommended that the Collection Cost Recovery Fee of \$550 be relieved, and we concurred.

13 **OTHER MATTERS**

14 None.

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