

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
 ) Account Number: SA U UT 084-117510  
VICTOR S. BAGLIO, JR. ) Case ID 473489  
 )  
Petitioner ) Tahoe City, Placer County

Type of Transaction: Purchase of motor home

Transaction Date: September 22, 2007

<u>Item</u>	<u>Measure</u>	
Purchase of Motor Home	\$243,263	
Tax as determined, protested		<u>\$17,632.00</u>
Proposed tax redetermination		\$17,632.00
Interest through 1/31/11		<u>4,437.38</u>
Total tax and interest		<u>\$22,069.38</u>
Monthly interest beginning 2/1/11		<u>\$102.85</u>

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner's purchase and use of the motor home is subject to California use tax. We conclude that it is.

Petitioner, a California resident, purchased the subject motor home from a California dealer and took delivery of the motor home in Boomtown, Nevada on September 22, 2007. Petitioner provided the dealer a signed BOE-447 in which petitioner certified that he was purchasing the motor home for use outside California. The dealer also obtained a properly executed and notarized BOE-448 documenting delivery of the motor home to petitioner outside California. Since the motor home was delivered and title transferred outside California, if any tax applies to this transaction, it will be use tax for which petitioner is liable as the purchaser.

Petitioner filed a Consumer Use Tax Return stating that the purchase and use of the motor home was exempt from use tax because the motor home was not purchased for use in California. With the return, petitioner submitted a calendar showing when the motor home was located in California and in Nevada, along with various receipts related to purchases, motor home repairs, and campground

1 stays. The calendar indicates that the motor home entered California on October 8, 2007, when  
2 petitioner took it to the dealer for repairs. The motor home was returned to Nevada on November 16,  
3 2007, where it remained until December 28, 2007, when it was again brought to the dealer in  
4 California for repairs, where it remained until February 4, 2008. The calendar states that petitioner  
5 was injured in a motorcycle accident on April 26, 2008, and that petitioner planned to continue his  
6 travels to the east coast and Canada upon doctor's approval. Along with the calendar petitioner  
7 submitted two work orders from the dealer, one showing the motor home had been at the dealer for  
8 repairs from October 8, 2007, through November 17, 2007, and the other showing the motor home at  
9 the dealer for repairs from December 28, 2007, through February 6, 2008.

10 Petitioner subsequently submitted a letter stating that he purchased the motor home to travel  
11 and stay in other states during the winter. Petitioner stated he intended to live at his home at Tahoe  
12 City, California during the summer, with the motor home being stored in Dayton, Nevada. Petitioner  
13 also indicated that he was receiving treatment for cancer in San Mateo in February 2008, and that he  
14 decided to stay in San Mateo until the weather improved so that he could take the motor home to  
15 Dayton, Nevada for storage. In addition, petitioner provided information regarding an accident in San  
16 Mateo involving the motor home and information regarding a motorcycle accident. As the result of the  
17 injuries he suffered in the motorcycle accident which required that he be hospitalized, petitioner was  
18 not released to travel until June 25, 2008, and he states he picked up the motor home on that date to  
19 drive it to Nevada.

20 As relevant to the purchase here, a vehicle purchased and first functionally used outside of  
21 California is presumed to have been purchased for use in this state if it was brought into California  
22 within 90 days after its purchase. (Cal. Code Regs., tit. 18, § 1620, subd.(b)(4).) The presumption  
23 may be rebutted by a showing that the vehicle was used, stored, or both used and stored outside of  
24 California one-half or more of the time during the six-month period immediately following its entry  
25 into this state.

26 Petitioner contends that the purchase and use of the motor home is not subject to use tax  
27 because he did not intend to use the motor home in California. Petitioner asserts, instead, that the  
28 motor home was purchased for use outside California during the winter months. Petitioner states that

1 unforeseen circumstances caused him to bring the motor home into California when he did and forced  
2 him to keep the motor home in California as long as he did. Also, petitioner argues that the time the  
3 motor home was being repaired should be counted as nonfunctional use and should not be counted as  
4 time spent in California.

5         Since the motor home first entered California on October 8, 2007, within 90 days of purchase,  
6 the presumption is that it was purchased for use in this state. Petitioner could overcome this  
7 presumption if he could establish that the motor home was outside California for at least one-half of  
8 the six-month period commencing on the entry of the motor home into California on October 8, 2007,  
9 and ending on April 8, 2008, a period of 183 days. Based on petitioner's own schedule, during this test  
10 period, the motor home was in California for 140 days, outside California for 41 days, and both inside  
11 and outside of California for 2 days. Since the motor home was inside California well over one-half of  
12 the time during the six-month test period, we find that petitioner has failed to rebut the presumption  
13 that the motor home was purchased for use in California, and the purchase and use is thus subject to  
14 use tax. We reject petitioner's argument that the time the motor home was in California for repairs  
15 should not count in the six month test because the motor home was nonfunctional. The applicable six-  
16 month test includes time that the motor home was used or stored, and there is no exclusion in the  
17 applicable test for time during which the motor home was not operable.<sup>1</sup>

18         With respect to petitioner's assertion that circumstances resulted in a change of the original  
19 intent to not use the motor home in California, we note that, to avoid the otherwise applicable use tax,  
20 petitioner would have to show that, at the time of purchase, he did not contemplate bringing the  
21 property into California for use in this state, and that the subsequent change of intent was beyond his  
22 control. At the time petitioner purchased the motor home, he owned a residence in California and  
23 rented an apartment in San Mateo. Also, petitioner stated that he intended to use the motor home to  
24 travel in other states during the winter months and return home to Tahoe City during the summer  
25 months, and he actually registered the motor home in California. Even if petitioner were to establish  
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28 <sup>1</sup> Even if there were some basis for removing the time of repairs from the test, which there is not, the motor home would  
*still* have been inside California for more than one-half of the six-month test period excluding time of repairs.

1 that his original intent for use of the motor home was changed as a result the extensive repairs needed  
2 to the motor home and his own injuries, that would not alter our conclusion. The proof needed to  
3 avoid tax on use of property in California based on changed intent is that the property was not  
4 purchased with the intent of using it in California, *not* proof that the purchaser had intended to use the  
5 property outside California long enough to satisfy the test for avoiding tax and changed circumstances  
6 resulted in the property being brought into California prior to the expiration of the test period. We find  
7 that petitioner has not established that he did not intend to use the motor home in California, and that  
8 the tax was properly imposed.

9 **OTHER DEVELOPMENTS**

10 None.

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12 Summary prepared by Rey Obligacion, Retired Annuitant  
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