

**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: )  
RUSSELL E. BELTTARY ) Account Number SB G UT 84-115603  
Petitioner ) Case ID 484124  
Toluca Lake, Los Angeles County

Type of Transaction: Purchase of a vessel

Date of Purchase: 10/16/07

<u>Item</u>	<u>Disputed Amount</u>
Purchase of a vessel	\$1,400,000
Tax as determined and protested	\$115,500.00
Interest through 04/30/13	<u>39,462.50</u>
Total tax and interest	<u>\$154,962.50</u>
Monthly interest beginning 05/01/13	<u>\$ 577.50</u>

This matter was scheduled for Board hearing in December 2010, but was deferred at the request of the Appeals Division pending the issuance of a supplemental D&R. It was rescheduled for hearing in March 2013 but was postponed since petitioner requested that the matter be heard in Culver City.

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner's purchase and use of the vessel purchased on October 16, 2007, is subject to use tax. We find that the purchase and use is subject to use tax.

Petitioner purchased a vessel on or around October 16, 2007, from Marine Max East, Inc. in Pompano Beach Florida. The vessel was delivered to petitioner on October 14, 2007, three miles offshore of Fort Lauderdale, Florida. After petitioner used the vessel in Florida, the vessel was shipped to Marina del Rey, California, arriving on or around October 31, 2007. Petitioner filed a Combined State and Local Consumer Use Tax Return for Vessels on May 13, 2008, indicating that the purchase price was \$1,400,000 and claiming that the Interstate and Foreign Commerce exclusion was applicable to the purchase.

1           The Sales and Use Tax Department (Department) requested documentation to show that the  
2 Interstate and Foreign Commerce exclusion applies to this transaction. Petitioner provided a log of the  
3 nautical miles traveled by the vessel and various receipts. Petitioner also provided evidence of various  
4 mechanical problems that limited the use of the vessel until mid-February 2008 or later. After various  
5 correspondence with petitioner, the Department concluded that the available documentation did not  
6 support an exclusion from use tax, and it issued the Notice of Determination in dispute.

7           Petitioner filed a timely petition for redetermination, and the Department requested specific  
8 types of documentation to verify the nautical miles log, including verification of engine hours at the  
9 time of purchase, maintenance logs and receipts for repairs, captain's logs, fuel receipts for cash and  
10 credit card purchases, and mooring receipts. The Department also requested evidence to support  
11 commercial use of the vessel. The Department found the available evidence insufficient to support an  
12 exclusion from use tax.

13           Petitioner contends that the purchase and use of the vessel is not subject to use tax because  
14 more than 70 percent of the nautical miles traveled by the vessel represented commercial travel in  
15 foreign commerce. Petitioner asserts that all of those miles occurred on one business trip to Ensenada,  
16 Mexico in April 2008, asserting that it is irrelevant that there was only one trip in foreign commerce  
17 since the only applicable factor is the percentage of nautical miles traveled in interstate and foreign  
18 commerce.

19           It is undisputed that the vessel was purchased and first functionally used outside California and  
20 that the vessel entered into California within 90 days of purchase. Accordingly, petitioner's purchase  
21 of the vessel is presumed to be subject to use tax unless petitioner can rebut the presumption by  
22 satisfying one of the applicable six-month tests. Petitioner claims that more than one-half of the  
23 nautical miles traveled by the vessel during the six-month period immediately following its entry into  
24 California were commercial miles traveled in interstate or foreign commerce. Since the vessel entered  
25 into California on October 31, 2007, the six-month test period is October 31, 2007, through April 30,  
26 2008. For petitioner to satisfy his burden, he must prove that one-half or more of the nautical miles  
27 traveled by the vessel during that six-month period were commercial miles traveled in interstate or  
28 foreign commerce.

1 After the D&R was issued, petitioner filed a Request for Reconsideration (RFR) and provided  
2 some additional documentation intended to verify the nautical miles traveled by the vessel and to show  
3 that more than half of those miles represented commercial miles in interstate or foreign commerce. In  
4 the SD&R, we noted that some of the evidence submitted for the RFR conflicted with information  
5 provided earlier. Further, as part of the evidence for the RFR, petitioner provided a revised mileage  
6 summary which included engine hours. That summary showed that 30 engine hours were logged on  
7 the vessel during the test period, 20 of which, according to petitioner, were related to the one trip to  
8 Ensenada, Mexico. However, based on the reading of engine hours on April 13, 2008, when the GPS  
9 coordinates showed the vessel was in Ensenada, Mexico, and the reading upon the return from  
10 Ensenada, the travel from Marina del Rey to Ensenada, Mexico appears to represent only six engine  
11 hours. The six hours for the trip is further supported by information provided by petitioner regarding  
12 average travel speed, from which we have calculated approximately 7 hours for the voyage. Thus, the  
13 round trip of 12 hours to Ensenada, Mexico is less than half of the 30 engine hours logged by the  
14 vessel during the test period. While the statutory test is based on miles, not engine hours, the engine  
15 hours provide corroboration of the nautical miles. Here, the available information regarding engine  
16 hours is conflicting, and it does not offer evidentiary support of the nautical miles listed by petitioner.  
17 Moreover, we are not convinced that the trip to Ensenada was primarily for business since petitioner  
18 has only provided evidence of business-related activities that are de minimis. Also, petitioner's claim  
19 that the trip was a business trip is contradicted by the facts that: the trip to Ensenada was a weekend  
20 cruise to a waterfront hotel, petitioner's father was a passenger on the trip, the petitioner owns the  
21 vessel personally (not as a business asset), and the customs document indicates the trip was for  
22 tourism. Accordingly, we find that petitioner has not met his burden of proving that the one trip was  
23 primarily a business trip or that one-half or more of the miles traveled by the vessel during the test  
24 period represented commercial miles in interstate or foreign commerce. Thus, petitioner has thus not  
25 rebutted the presumption that the purchase of the vessel was subject to use tax.

#### 26 OTHER MATTERS

27 None.

28 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III