

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:)
BLUE BARONESS LLC) Account Number SB G UT 84-107678
Petitioner) Case ID 519591
Santa Monica, Los Angeles County

Type of Transaction: Purchase of vessel

Date of purchase: 10/27/06

<u>Item</u>	<u>Disputed Amount</u>
Purchase of vessel	\$807,223
Tax as determined and protested	\$66,595.00
Interest through 04/30/13	<u>22,891.19</u>
Total tax and interest	\$89,486.19
Payments	<u>- 5,171.25</u>
Balance Due	<u>\$84,314.94</u>
Monthly interest beginning 05/01/13	<u>\$ 307.12</u>

This matter was scheduled for Board hearing in July 2012, but was deferred at the request of the Sales and Use Tax Department (Department) for further investigation. In that investigation, the Department verified that the transaction had not been reported to the Board by the seller.

UNRESOLVED ISSUE

Issue: Whether petitioner timely elected to pay its use tax liability based on fair rental value of the vessel. We find that it did not.

Petitioner purchased a 54 foot sail boat on October 27, 2006, with no payment of tax or tax reimbursement. Petitioner provided the seller a copy of its seller's permit and informed the seller that the transaction was a non-taxable sale for resale since petitioner was going to charter the vessel and elect to report its tax liability based on the fair rental value. Petitioner's seller's permit had been active for only a few months in 2002, and was closed when petitioner provided it to the seller of the vessel. The first time a customer chartered the vessel was March 17, 2007. Petitioner filed its first use tax return reporting the fair rental value of its charters on January 14, 2008, nominally for the period

1 October 29, 2006 through December 31, 2006 (i.e., prior any actual charter of the vessel). We are
2 unable to discern the period for which petitioner reported this tax. Petitioner made two subsequent
3 payments of tax (apparently measured by fair rental value of the vessel) without filing a return, and
4 then on May 13, 2008, petitioner filed an annual return for the period January 1, 2007 through
5 December 31, 2007, reporting tax that appears to be measured by the fair rental value of the vessel..

6 In October 2007, the Sales and Use Tax Department (Department) sent petitioner a Combined
7 State and Local Consumer Use Tax Return for Vessels, advising petitioner to either pay the use tax
8 based on the purchase price of the vessel or provide evidence that the purchase and use was exempt
9 from tax. In response, petitioner declared that the purchase was not subject to use tax, asserting that it
10 would pay its use tax liability measured by the fair rental value. The Department concluded that, in
11 order to make a timely election to report tax measured by the fair rental value, petitioner would have
12 had to report the March 17, 2007 charter on its return for the first quarter 2007, filed by April 30, 2007.
13 Since petitioner had not done so, the Department concluded that petitioner owed use tax measured by
14 the purchase price of the vessel.

15 Petitioner argues that it was entitled to report tax measured by fair rental value on an annual
16 basis, citing Revenue and Taxation Code section 6452.1. Furthermore, petitioner contends that the
17 Department's determination that petitioner did not timely elect to pay tax measured by fair rental value
18 constitutes a civil forfeiture of a right and that the legislature limited the penalty for failure to file a
19 timely return to petitioner being subject to a criminal offense and not forfeiture of the ability to report
20 tax based on fair rental value.

21 Petitioner conducted its first charter during the first quarter 2007.¹ To make a timely election
22 to report and pay tax measured by fair rental value rather than on purchase price of the vessel, that
23 election had to be made with petitioner's timely return for that quarter. Since petitioner did not file a
24

25 ¹ The term "charter" is commonly used to describe a transaction where the owner of the vessel maintains control over the
26 vessel, for example, when the owner pilots the vessel or hires a captain to do so. A true charter is not a lease and a
27 purchaser of a vessel for use in such charter service cannot elect to pay tax on fair rental value because the vessel is not
28 purchased for the limited purpose of leasing. However, the term "charter" is also sometimes used to describe a transaction
that is a true lease, with true control of the vessel transferred to the lessee. Only if petitioner's charters were true leases,
and the vessel were not used for any other purpose, would petitioner have been eligible to elect to pay use tax measured by
fair rental value.

