STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Administrative Protest Under the Sales and Use Tax Law of:	
JAMES MICHAEL DUGGAN	Account Number SA A UT 84-092334 Case ID 441787
Taxpayer	Loomis, Placer County

Type of Transaction: Purchase of a vehicle

Date of Purchase: 03/09/04

Item	Disputed Amount
Purchase of vehicle	$30,000

	Tax	Penalty
As determined	$2,175.00	$217.50
Post D&R adjustment	00.00	- 217.50
Balance, protested	$2,175.00	$ 00.00

Determined tax	$2,175.00
Interest through 11/30/12	1,461.10
Finality penalty	217.50
Total tax, interest, and penalty	$3,853.60
Monthly interest beginning 12/01/12	$ 10.88

This matter was scheduled for Board hearing on February 28, 2012, but taxpayer did not respond to the Notice of Hearing. Accordingly, the matter was scheduled for decision on the nonappearance calendar, but taxpayer subsequently requested that the matter be scheduled for hearing. The matter was rescheduled for hearing on March 20, 2012, and again on June 27, 2012, but was postponed each time at taxpayer's request due to a medical issue.

UNRESOLVED ISSUE

Issue: Whether taxpayer's purchase and use of the vehicle is subject to California use tax. We find that it is.

Taxpayer, a California resident, purchased an amphibious vehicle on March 9, 2004, from a seller in Minnesota. The Sales and Use Tax Department (Department) became aware that the vehicle

was located in California and sent taxpayer a consumer use tax return for vehicles. Instead of completing the return, taxpayer called the Department, asserting that the purchase was not subject to use tax. As support, taxpayer provided a copy of the bill of sale, shipping documents, and a photograph. Although the Department requested additional documentation, taxpayer provided nothing more. The Department concluded that the purchase was subject to use tax.

Taxpayer contends that the vehicle was not purchased for use in California and asserts that the vehicle was outside of California for the required statutory time. Taxpayer states that, during the time the vehicle was outside California after the date of purchase, he used it to take his brother and other family members for rides. Taxpayer also states that, as a vehicle of historical interest, it is subject only to a nominal licensing fee of $2.00 according to the Vehicle Code. Taxpayer states that he has no additional documentation to present because his house was destroyed by fire around the time the Notice of Determination was issued.

It is undisputed that the vehicle was purchased outside California March 9, 2004. Although the evidence taxpayer provided (a photograph) was far from conclusive, we accepted in the D&R that the vehicle was first functionally used outside California. It was then brought into California on August 16, 2004, 160 days after purchase. Although taxpayer has stated that he used the vehicle outside California during those 160 days, he has provided no documentation of such use other than the previously-mentioned photograph which, at best, is evidence that the vehicle was used one time outside California. Further, taxpayer's description of events directly conflicts with the seller's statement that he stored the vehicle on his property from the time of purchase until he shipped it to taxpayer. Accordingly, we find that taxpayer has not shown that the vehicle remained outside California for at least 90 days, exclusive of any time of shipment to California or time of storage for shipment to California. Thus, it is presumed that the vehicle was purchased for use in California. There is no evidence, and taxpayer has not asserted, that the vehicle was used or stored outside California during the first six months after it entered this State. Consequently, we find that taxpayer has not rebutted the presumption, and use tax applies. We find it irrelevant that the vehicle may be of historical interest and thus subject to only a nominal licensing fee, since any code section limiting the licensing fee has no bearing on the application of California use tax.

RESOLVED ISSUE

Since taxpayer did not file a consumer use tax return, a failure-to-file penalty of $217.50 was applied, and taxpayer has requested relief. We find taxpayer believed in good faith, albeit erroneously, that no use tax was due, and we recommend that this penalty be relieved.

OTHER MATTERS

After issuance of the D&R and SD&R, taxpayer submitted a trial court ruling which held that the subject vehicle was owned by someone else. Apparently, that conclusion was based on the court's finding that the funds to purchase the vehicle were provided by the other individual. However, the evidence before us includes a bill of sale which lists taxpayer, and only taxpayer, as the purchaser. Further, since taxpayer never raised this argument previously, even though he has been represented by attorneys throughout the appeals process, it appears clear that, at the time of acquisition, and at the time the appeals conference was held, taxpayer did regard himself as the owner. In any event, regardless of whether the court reassigned ownership based on a tracing of funds, the record indicates that taxpayer is the person who dealt with the seller and purchased the property, in his own name. The source of funds for the purchase is not relevant to the application of tax to his purchase.

In addition, since taxpayer did not timely pay the determination or file a petition for redetermination, a finality penalty of $217.50 was applied. Although we explained to taxpayer that he could file a request for relief of the finality penalty and provided a form he could use to do so, taxpayer has not returned that form or otherwise filed a request for relief. Thus have no basis to consider recommending relief of the finality penalty.

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