

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:)
KIMBERLY SHENA GRIGSBY) Account Number: SA UT 84-113996
Petitioner) Case ID 442731
Los Angeles, Los Angeles County

Type of Transaction: Purchase of a vehicle

Date of Purchase: 08/12/04

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Purchase of vehicle	\$18,101		
Relief of interest	\$ 932		
As determined		\$1,590.00	\$159.00
Adjustment Appeals Division		- 95.00	- 159.00
Proposed redetermination, protested		<u>\$1,495.00</u>	<u>\$ 00.00</u>
Proposed tax redetermination		\$1,495.00	
Interest through 02/29/12		<u>931.82</u>	
Total tax and interest		<u>\$2,426.82</u>	
Monthly interest beginning 03/01/12		<u>\$ 8.72</u>	

UNRESOLVED ISSUES

Issue 1: Whether petitioner's purchase and use of the vehicle is subject to use tax. We find that it is.

Petitioner leased the subject vehicle from Mitsubishi Motors Credit of America, Inc. (MMCA), which is located in Cerritos, California. She then purchased the vehicle at the end of the lease term. Although she had paid tax reimbursement to MMCA with respect to the lease payments, she did not pay tax reimbursement to MMCA or use tax to the Department of Motor Vehicles (DMV) with respect to the purchase of the vehicle.

The Sales and Use Tax Department (Department) found that MMCA did not hold, and was not required to hold, a seller's permit. Since petitioner had purchased the vehicle for use in California and had not claimed any exemption from tax, the Department determined that petitioner owes use tax.

1 Petitioner contends she is not liable for use tax because she already paid tax reimbursement to MMCA
2 with her lease payments for four years. Alternatively, petitioner states that she believes she paid sales
3 tax reimbursement on the purchase of the vehicle to either MMCA or Pacific Resource Credit Union
4 (PRCU).

5 Use tax applies to the storage, use, or other consumption in this state of tangible personal
6 property purchased for use and used in California. (Rev. & Tax. Code, § 6201; Cal. Code Regs.,
7 tit. 18, § 1620, subd. (b)(1).) A purchaser of a vehicle, other than a vehicle purchased from a person
8 required to hold a seller's permit, is required to report and pay use tax to the state unless a specific
9 exemption or exclusion applies. (Rev. & Tax. Code, § 6202, subd. (a); Cal Code Regs., tit. 18, § 1610,
10 subd. (c)(2)(A).) Where a lessee exercises an option to purchase a vehicle at the end of the lease term,
11 that purchase is a taxable retail sale and purchase, without regard to whether the lease payments were
12 taxable (as here) or not (if the lessor had elected to pay tax or tax reimbursement on its purchase price).
13 Thus, tax became due upon petitioner's purchase of the vehicle regardless of whether she had paid tax
14 reimbursement to MMCA with respect to lease payments. Accordingly, we reject petitioner's first
15 contention. Also, since it is undisputed that MMCA was not in the business of selling vehicles and did
16 not hold a seller's permit, and was not required to hold a seller's permit, if any tax is due, it is use tax
17 owed by petitioner. (Rev. & Tax. Code, §§ 6201, 6202, subd. (a).) Regarding her alternative
18 contention, petitioner has provided no evidence that she paid tax to MMCA or PRCU, and the
19 available evidence shows that she did not. Accordingly, we find petitioner is liable for the use tax.

20 **Issue 2:** Whether relief of interest is warranted. We find relief is not warranted.

21 Petitioner purchased the vehicle on August 12, 2004, and registered it August 23, 2005. The
22 Department issued the Notice of Determination to petitioner March 4, 2008. Petitioner has filed a
23 request for relief of interest on the grounds that the Department delayed four years before contacting
24 her and because the DMV erroneously failed to collect use tax.

25 Revenue and Taxation Code section 6593.5, subdivision (a)(2) provides that the Board may
26 relieve all or part of the interest imposed where the failure to pay use tax on a vehicle registered with
27 the DMV was the direct result of an error by the DMV in calculating the use tax. We find that the
28 language of the statute is specific and that it provides no room for a broader interpretation to include

1 cases like this, where the DMV completely fails to assess the use tax. Thus, we find that relief is not
2 warranted on this basis.

3 The Board may also relieve interest where a person's failure to pay tax was due to an
4 unreasonable error or delay by an employee of the Board. (See Rev. & Tax. Code, § 6593.5, subd.
5 (a)(1).) We first note that, while petitioner refers to a four-year delay, the Department issued the
6 determination two years and seven months after it received notice from the DMV of petitioner's
7 purchase and failure to pay use tax, and the normal process in cases such as this can take, on average,
8 two to two-and-a-half years. Accordingly, we find that there is no evidence of an unreasonable error
9 or delay by an employee of the Board. Consequently, we find no basis for relief.

10 **RESOLVED ISSUE**

11 The Department assessed a negligence penalty because that is the Department's standard
12 practice whenever a taxpayer fails to pay use tax upon the purchase of a vehicle for use in California.
13 However, we find that petitioner had a good faith, albeit mistaken, belief that she either did not owe
14 use tax on her purchase of the vehicle or that the tax had been paid by MMCA or PRCU. In addition,
15 under the circumstances of this case, the DMV should have collected use tax when petitioner registered
16 the vehicle, and it is not clear from the record why DMV did not do so. Accordingly, we find that
17 petitioner was not negligent, and we recommend that the penalty be deleted.

18 **OTHER DEVELOPMENTS**

19 None.

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