

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:)
NEAL O’GILVY AND DEANNE O’GILVY) Account Number: SA U UT 84-104506
Case ID 434977
Petitioners) Enterprise, Florida

Type of Transaction: Purchase of motor home
Date of Purchase: March 25, 2005

<u>Item</u>	<u>Disputed Amount</u>		
Purchase of motor home	\$179,349		
Failure-to-file penalty	\$ 1,480		
		<u>Tax</u>	<u>Penalty</u>
As determined:		\$15,137.00	\$1,513.70
Adjustment - Sales and Use Tax Department		- 341.00	- 34.10
Proposed redetermination		<u>\$14,796.00</u>	<u>\$1,479.60</u>
Proposed tax redetermination		\$14,796.00	
Interest through 4/30/10		6,608.88	
10% penalty for failure to file a return		<u>1,479.60</u>	
Total tax, interest, and penalty		<u>\$22,884.48</u>	
Monthly interest beginning 5/1/10		<u>\$ 86.31</u>	

This matter was scheduled for Board hearing on January 27, 2010, but petitioners did not respond to the Notice of Hearing. Accordingly, the Board Proceedings Division informed petitioners that this matter will be presented to the Board for decision without oral hearing. Subsequently, petitioners requested an oral hearing.

UNRESOLVED ISSUES

Issue 1: Whether petitioners’ purchase and use of the motor home is subject to use tax. We conclude that it is.

Petitioners, California residents living in Lakewood, California, purchased a motor home from a dealer located in San Diego. The motor home was delivered to petitioners in Yuma, Arizona on or about March 25, 2005. Thus, if any tax applies to this transaction, it will be use tax, for which

1 petitioners are liable. Petitioners provided a statement to the dealer indicating that the motor home was
2 purchased for use outside California. The dealer registered the motor home with the Department of
3 Motor Vehicles at the time of purchase, but did not collect any use tax from petitioners or remit any
4 use tax to the Board. The motor home returned to California on or about April 5, 2005. On July 7,
5 2007, the Sales and Use Tax Department (Department) mailed petitioners a Consumer Use Tax Return,
6 which petitioners did not complete. On December 28, 2007, petitioners asked the Department to bill
7 them so that a payment plan could be established. The Department issued a Notice of Determination
8 on December 31, 2007, for use tax measured by \$183,499. The Department subsequently reduced the
9 measure of tax to \$179,349, after deducting \$4,150 for the cost of a nontaxable optional service
10 contract that had been included in the purchase price.

11 Petitioners filed a petition for redetermination, contending the transaction was not subject to
12 California use tax because the motor home was not purchased for use in California. Based on the
13 available information and documentation, the Department determined that the motor home was used or
14 stored in California for at least 216 days during the first 12 months of ownership. Accordingly, since
15 the motor home entered California within 12 months of purchase and since the purchasers were
16 California residents, the motor home was registered in California, and the motor home was inside
17 California for more than one-half of the first 12 months of ownership, the Department concluded that
18 the motor home was purchased for use in California and that use tax applies.

19 On appeal, petitioners argue that use tax is not applicable because their intent was to use the
20 motor home in and around Florida, where petitioners have owned property since 2004. Petitioners
21 assert that they only brought the motor home back to California for warranty repairs and to provide a
22 home while Mrs. O'Gilvy was treated for cancer. Petitioners also maintain that the time the motor
23 home spent in California for repair should not be included in the test period for determining whether
24 the motor home was purchased for use in this state.

25 It is undisputed that the motor home was purchased and first functionally used outside
26 California, that petitioners were California residents at the time of purchase, and that the motor home
27 was registered in California during the first 12 months of ownership. Accordingly, it is rebuttably
28 presumed that the motor home was acquired for storage, use, or other consumption in this state. The

1 presumption may be rebutted by documentary evidence that the motor home was used or stored outside
2 California more than one-half of the time during the first 12 months of ownership.

3 Petitioners have provided limited documentation regarding the motor home's use outside
4 California. The bulk of the documentation submitted by petitioners consists of utility bills and receipts
5 from retail stores in Florida. While these documents may establish that petitioners have a home in
6 Florida and made purchases there, they are not probative of petitioners' actual use of the motor home.
7 In contrast, information provided in petitioners' correspondence, along with the Vehicle Repair
8 History, indicates that the motor home was in California for 216 days during the first 12 months after
9 purchase. Therefore, we conclude that petitioners have not overcome the presumption that they
10 purchased the motor home for use in California, and that use tax properly applies.

11 Petitioners' reliance on the amendment to Revenue and Taxation Code section 6248, operative
12 September 20, 2006 (incorporated into California Code of Regulations, title 18, section 1620 with the
13 same operative date) is misplaced. They rely on this provision for their argument that the time spent
14 for repairs in California should not count toward the time the motor home was used in this state.
15 However, the purchase was made on March 25, 2005, and the 12-month period relevant to the
16 determination of whether the motor home was purchased for use in California thus ended on March 25,
17 2006. Since the amendment relied on by petitioners did not become operative until six months later,
18 we find that the amendment to section 6248 relied on by petitioners is irrelevant. Furthermore, if the
19 subject amendment were operative during the applicable period, it still would not apply to the facts
20 here because the motor home was not brought into the state for the *exclusive purpose* of warranty
21 repair service. Rather, petitioners have explained that the motor home was brought back to California
22 as a place to live during Mrs. O'Gilvy's medical treatment. Additionally, not only was the total time
23 the motor home was in California for repairs in excess of 30 days, but one of the repair periods, August
24 12, 2005, through January 19, 2006, was itself far in excess of 30 days.

25 With respect to petitioners' assertion that circumstances resulted in a change of their original
26 intent to not use the motor home in California, we note that, to avoid the otherwise applicable use tax,
27 petitioners would have to show that, at the time of purchase, they did not contemplate bringing the
28 property into California for use in this state, and that the subsequent change of intent was beyond their

1 control. At the time petitioners purchased the motor home, they owned a residence in California, and
2 Mr. O’Gilvy was employed in California. From those facts, it is reasonable to infer that petitioners
3 would continue to have a presence in this state, and we find that the evidence does not support a
4 finding that, at the time of purchase, petitioners contemplated using the motor home exclusively
5 outside California. Further, while Mrs. O’Gilvy’s medical issues and the service requirements for the
6 motor home were beyond petitioners’ control, we find that the choice to bring the motor home to
7 California for either stated purpose was within their control. Petitioners could have stayed somewhere
8 else in California during the medical treatment, and the warranty work could have been performed
9 outside this state. We find that petitioners have not documented that they purchased the motor home
10 with the intent to use it *exclusively* outside California and that they thereafter encountered
11 circumstances entirely outside their control which necessitated their use of the motor home in this
12 state.

13 **Issue 2:** Whether there is reasonable cause for relief from the failure-to-file penalty. We find
14 that there is not.

15 The Department assessed a 10-percent failure-to-file penalty because petitioners did not file a
16 Consumer Use Tax Return. Petitioners filed a request for relief from the penalty on the basis that they
17 had every intention of leaving California on March 25, 2005, and not returning to California with the
18 motor home. Even if petitioners believed they did not owe use tax on the purchase of the motor home,
19 they could have completed the return with an explanation of why they were reporting no tax due.
20 Petitioners have not offered any explanation why they did not do so, and we find there is no basis upon
21 which to recommend relief from the failure-to-file penalty.

22 **OTHER DEVELOPMENTS**

23 None.

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25 Summary prepared by Rey Obligacion, Business Taxes Specialist III, Retired
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