

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:)
FRANK ALLEN RANDAZZO) Account Number: SA U UT 84-100100
Petitioner) Case ID 421497
Rancho Cucamonga, San Bernardino County

Type of Transaction: Purchase of motor home

Date of Purchase: 02/19/05

<u>Item</u>	<u>Disputed Amount</u>
Motor home purchase	\$140,400
Tax as determined and protested:	<u>\$10,883.00</u>
Proposed tax redetermination	\$10,883.00
Interest through 6/30/11	<u>5,949.18</u>
Total tax and interest	<u>\$16,832.18</u>
Monthly interest beginning 7/1/11	<u>\$ 54.41</u>

This matter was previously scheduled for Board hearing on March 25, 2011, but was postponed at petitioner's request because of a scheduling conflict.

UNRESOLVED ISSUE

Issue: Whether the purchase and use of the motor home is subject to use tax. We find that it is.

Petitioner purchased a motor home from a California dealer. The motor home was delivered to petitioner by the dealer's agent in Las Vegas, Nevada. The dealer provided forms BOE-447 and BOE-448, which had been completed by petitioner, stating that the motor home was purchased for use outside California and confirming delivery outside California. Since the purchase of the motor home occurred outside California, if any tax applies to this transaction it will be use tax for which petitioner is liable.

The Sales and Use Tax Department (Department) sent a consumer use tax return to petitioner and, when it received no response, issued the Notice of Determination in dispute. Petitioner contends that he is not liable for use tax because he did not purchase the motor home for use in California. He

1 asserts that he kept and used the vehicle outside California except for time spent at the dealer for
2 necessary, extensive, warranty repairs. He claims that a change in the law after his purchase is
3 evidence that necessary warranty work done in California does not represent use in California.
4 Further, petitioner argues that the necessity for extensive warranty repairs was outside his control and
5 therefore should not be regarded as evidence that he did not purchase the motor home for use outside
6 California. In support, petitioner has provided one receipt showing the vehicle was parked in an RV
7 park in Nevada on January 21, 2006, and two written statements from John Moreno stating that
8 Mr. Moreno stored the motor home in Mohave Valley, Arizona (approximately two miles from the
9 California border) from the time petitioner purchased the vehicle until February 2006.

10 It is undisputed that the motor home entered California during the first 12 months after
11 petitioner's purchase, that petitioner is a resident of California, and that the motor home was registered
12 in California. Accordingly, the vehicle is presumed to have been purchased for use in this state. (Rev.
13 & Tax. Code, § 6248.) That presumption may be rebutted if petitioner proves that he purchased the
14 vehicle for use outside of California during the first 12 months of ownership (the test period), which is
15 from February 19, 2005, through February 19, 2006. (Rev. & Tax. Code § 6248, subd. (b); Cal. Code
16 Regs., tit. 18, § 1620, subd. (b)(5)(B).)

17 Petitioner has provided a parking receipt for one night at an RV park in Nevada and two
18 statements from his friend, Mr. Moreno, that the motor home was stored in Arizona during the test
19 period. We note Mr. Moreno's first statement showed he had stored the motor home for petitioner
20 beginning January 2005, before the date of purchase. The error in that date was corrected in
21 Mr. Moreno's second statement. The incorrect date on the original statement raises questions
22 regarding the credibility of the statement. Further, based on the dealer's repair records, the vehicle was
23 kept at the dealer's facility in Montclair, California for approximately four months, undergoing
24 warranty repairs, during the same time the motor home was allegedly stored at Mohave Valley,
25 Arizona. Moreover, we note that, based on the odometer readings, petitioner drove the motor home
26 approximately 6,000 miles during the test period, in addition to the mileage required to transport the
27 vehicle to the dealer for repairs. We find that the time the motor home was located at the dealer's and
28 the 6,000 miles it was driven are strong evidence that Mr. Moreno did not store the motor home in

1 Mohave Valley, Arizona during the entire test period, as his statements indicate. Accordingly, we find
2 Mr. Moreno's statements unreliable and unpersuasive. We find the receipt for one night's stay outside
3 California has minimal weight in evidencing a year's worth of use or intended use. For these reasons,
4 we conclude that petitioner has failed to rebut the presumption that he purchased the vehicle for use in
5 this state.

6 With respect to petitioner's assertion that the time the motor home was at the dealer's should
7 not be regarded as use in California for purposes of the test, we note that section 6248 was amended,
8 operative September 20, 2006, to provide that entry into California for the exclusive purpose of
9 warranty or repair service not exceeding 30 days may rebut the presumption that a vehicle was
10 purchased in this state. However, that provision is not applicable in this case for two reasons. First, it
11 was not operative when petitioner purchased the motor home. Furthermore, even if the purchaser had
12 occurred *after* the operative date of this provision, the result would be the same because petitioner's
13 motor home was at the dealer's for a period much longer than 30 days. Accordingly, there is no basis
14 to consider excluding the time that the motor home was at the California dealer's for repair from the
15 test period.

16 **OTHER DEVELOPMENTS**

17 None.

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19 Summary prepared by Thea Etheridge, Business Taxes Specialist II
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