

**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: )  
 RICHARD J. ROBLEDO & GLORIA M. ROBLEDO ) Account Number SR KHO 101-092788  
 Case ID 483571  
 Petitioners ) Madera, Madera County

Type of Transaction: Purchase of a motor home

Transaction Date: 09/21/03

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Purchase of a motor home	\$126,040		
Relief of interest	\$ 7,033		
As determined		\$ 9,768.10	\$976.81
Post-D&R adjustment		<u>00.00</u>	<u>- 976.81</u>
Proposed tax redetermination, protested		\$ 9,768.10	<u>\$ 00.00</u>
Interest through 07/31/12		<u>7,032.96<sup>1</sup></u>	
Total tax and interest		<u>\$16,801.06</u>	
Monthly interest beginning 08/01/12		<u>\$ 48.84</u>	

**UNRESOLVED ISSUES**

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

On September 20, 2003, petitioners purchased a motor home from Paul Evert's RV Country, Inc. in Fresno. Petitioners, a husband and wife who were residents of California, provided forms to the dealer to document that the motor home would be delivered to petitioner in Boomtown, Nevada, and that petitioner intended to use the motor home outside California. Since the dealer documented that the sale occurred outside California, the applicable tax is use tax owed by petitioners, and based on the

<sup>1</sup> Interest is net of an adjustment of \$81.40, which represents the relief of interest for the period July 22, 2008, through August 8, 2008, as recommended in the D&R.

1 form petitioner provided to the dealer, it was not required to collect any use tax from petitioners. Thus,  
2 if any tax applies to this transaction, it is use tax for which petitioners remain liable.

3 In response to a letter from the Sales and Use Tax Department (Department), petitioners  
4 indicated that the motor home had been delivered to them by the dealer in Nevada, that it had been  
5 returned to California for warranty repairs for various periods, and that the motor home had entered  
6 California on a permanent basis in March 2004. Along with various types of documentation,  
7 petitioners provided a chronology of expenses related to use of the motor home on which they  
8 computed that, for the period immediately following the purchase of the motor home, the vehicle was  
9 in California for 74 days and in Nevada for 92 days. Petitioners asserted that the evidence was  
10 sufficient to show that the motor home was not purchased for use in California.

11 Based on its review of the documentation petitioners submitted along with work orders  
12 obtained from the dealer, the Department determined that the RV had been in California a majority of  
13 the time during six months following the RV's initial entry into California on September 27, 2003.  
14 Thus, the Department concluded that tax was applicable. Petitioner disputes the Department's  
15 conclusion, arguing that it intended to keep the motor home in Nevada, in anticipation of retirement.  
16 Petitioner asserts the motor home was returned to California because it required substantial repairs,  
17 and, in order for the repairs to be covered under warranty, the motor home had to be brought back into  
18 California.

19 It is undisputed that the motor home was purchased outside California and that it was returned  
20 to California for warranty repair work less than 90 days after purchase. Thus, the motor home is  
21 presumed to have been purchased for use in California unless petitioner provides documentation  
22 establishing that the motor home was outside of California one-half or more of the time during the six-  
23 month period immediately following its entry into the state. (Cal. Code Regs., tit. 18, § 1620, subd.  
24 (b)(4)(A).) In this case, that six-month period is September 27, 2003, through March 27, 2004. Based  
25 on the repair work orders prepared by the dealer, we find the motor home remained in California for a  
26 total of 72 days prior to March 2004. Petitioner has not provided any documentation regarding the  
27 location of the motor home beginning March 1, 2004, but it has indicated that the motor home entered  
28 California on a permanent basis "in March 2004." Hence, we find that the motor home was in

1 California for the 27 days in March that are included in the six-month period, for a total of 99 days of  
2 the 183 days in those six months, or 54 percent. Therefore, we find that the motor home was  
3 purchased for use in California. Regarding the argument that the circumstances were outside  
4 petitioner's control, we do not agree. It is not unforeseeable that a vehicle will need warranty repairs.  
5 If the warranty required warranty service to be provided in California (which seems unlikely), then, as  
6 part of the contract, it was not unforeseeable. If petitioner chose to bring the motor home into  
7 California for the warranty work for their convenience (as California residents) or for any other reason,  
8 that was a decision petitioners made. In any event, we conclude that the circumstances resulting in the  
9 motor home's return to California were not outside petitioners' control, and that petitioners have failed  
10 to rebut the presumption that the purchase and use of the motor home is subject to use tax.

11 **Issue 2:** Whether relief of interest is warranted. We find no further adjustment is warranted.

12 Petitioners have requested relief of interest on the basis that there was an unreasonable error or  
13 delay by an employee of the Board, noting that the audit workpapers related to petitioners' liability  
14 include information from an unrelated case. Petitioners argue that this extraneous information resulted  
15 in additional time required for petitioners to understand the audit workpapers and in additional time for  
16 the Department to analyze the error and correct the workpapers. The audit workpapers do reference  
17 information the Department had reviewed in connection with an unrelated account. Petitioner notified  
18 the Department of that error on July 22, 2008, and the Department acknowledged the error on  
19 August 8, 2008. We recommend relief of interest that accrued from July 22, 2008, through August 8,  
20 2008. We find that petitioners have provided no evidence of other unreasonable delay or errors by  
21 Board staff, and no further relief of interest is warranted.

## 22 **RESOLVED ISSUE**

23 Since petitioners did not file a return to report the purchase the motor home, the determination  
24 includes a failure-to-file penalty of \$976.81. Petitioners have requested relief of the penalty on the  
25 basis that they believed that use tax was not due. We find that petitioners had a good faith, albeit  
26 erroneous, belief that the purchase would not be subject to use tax since they intended to use the motor  
27 home outside California. We therefore find that their failure to file a return was due to reasonable  
28 cause, and we recommend relief of the failure-to-file penalty.

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**OTHER MATTERS**

None.

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