

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 SADDLEBACK RECREATIONAL VEHICLES,) Account Number: SR EH 24-915739
 6 dba SADDLEBACK WINNEBAGO) Case ID 379945
 7 Petitioner) Colton, San Bernardino County

8 Type of Business: Sales and service of recreational vehicles

9 Audit period: 01/01/03 – 12/31/05

10 <u>Item</u>	<u>Disputed Amount</u>
11 Disallowed claimed exempt sales in interstate commerce	\$1,600,591
12 Tax as determined:	\$434,739.85
13 Adjustment - Sales and Use Tax Department	-242,631.98
14 - Appeals Division	- 62,332.33
14 Proposed redetermination	<u>\$129,775.54</u>
15 Less concurred	- 6,706.92
15 Balance, protested	<u>\$123,068.62</u>
16 Proposed tax redetermination	\$129,775.54
17 Interest through 6/30/10	<u>66,533.64</u>
17 Total tax and interest	\$196,309.18
18 Payments	- 362.00
19 Balance Due	<u>\$195,947.18</u>
20 Monthly interest beginning 7/1/10	<u>\$ 754.91</u>

21 UNRESOLVED ISSUE

22 **Issue:** Whether adjustments are warranted to the disallowed claimed exempt sales in interstate
 23 commerce. We recommend no further adjustment.

24 Petitioner is a retailer of recreational vehicles (RV's). During the audit period, it operated out
 25 of multiple locations in California. The Sales and Use Tax Department (Department) examined
 26 petitioner's claimed exempt sales in interstate commerce on an actual basis. The Department found
 27 some claimed exempt sales for which petitioner did not provide adequate supporting documentation.
 28 Since the audit was completed, petitioner has provided additional evidence, and two reaudits have been

1 conducted. Eight transactions remain in dispute, four of which were sales to out-of-state residents for
2 which the Department finds petitioner has not provided adequate documentation of delivery outside
3 California. The remaining four transactions were sales to California residents for which the
4 Department finds the evidence insufficient to show that the California resident purchased the RV for
5 use outside California. Petitioner contends that all eight disputed transactions involved legitimate out-
6 of-state sales and alleges that it has provided sufficient documentation to support its contention.

7 For the four disputed sales to out-of-state residents, the Department has established, based on
8 petitioner's records, that each of the four purchasers resided outside California. However, for these
9 sales, the RV's were located at one of petitioner's California facilities prior to delivery to the
10 purchasers. Absent evidence proving otherwise, it is presumed that the sales occurred in California
11 and are subject to sales tax. For three of the four sales, we find no evidence of a delivery location or
12 evidence to show the sales occurred outside California. There is neither evidence that the contract of
13 sale required out-of-state delivery by petitioner, nor evidence of actual out-of-state delivery, each of
14 which is required to show that the exemption provided by Revenue and Taxation Code section 6396
15 applies. Thus, we find that these three sales occurred in California and were subject to sales tax. For
16 the fourth sale, to residents of Montana, there is conflicting evidence, some of which indicates delivery
17 in Oregon by the purchaser's agent, and some, provided about seven months after the sale, which
18 describes delivery to Montana but does not identify the person making the delivery. For this sale, there
19 is insufficient evidence to show the sale was exempt. Even if petitioner could show that the contract of
20 sale required it to deliver the vehicle to the purchaser outside California, the conflicting documents
21 provided to date do not prove that the vehicle was actually delivered outside California by petitioner.
22 Accordingly, we conclude that the sale occurred in California and is subject to sales tax.

23 With respect to the four remaining disputed sales, the Department has established from
24 petitioner's records that the purchasers were California residents. Thus, since these purchasers were
25 known to petitioner to be California residents, it is presumed that they were purchasing the RV's for
26 use in California, and that petitioner is responsible for collecting the applicable use tax and remitting it
27 to the Board. (Rev. & Tax. Code, §§ 6203, 6247.). That is, if any of these sales were subject to sales
28 tax, then petitioner owes that sales tax, but if any of them were not subject to sales tax, petitioner

1 would still be liable for the same amount as use tax, which it was required to collect from the purchaser
2 and remit to the Board, unless it can overcome the presumption that the RV was purchased for use in
3 this state. To overcome the presumption, petitioner either must have taken a timely statement from the
4 purchaser that the RV was purchased for use outside California (e.g., a completed BOE 447 form), or
5 must establish that the RV was actually purchased for use outside California.

6 For three of the four sales, we find the evidence provided is not sufficient to show that the RV's
7 were delivered outside California because the documents submitted in support are unsigned or were
8 submitted long after the transaction occurred. Thus, we find that petitioner has not established that
9 these three sales occurred outside California or qualified for the section 6396 exemption; we conclude
10 that petitioner owes sales tax on these three sales. With respect to the fourth of the disputed sales to
11 California residents, petitioner has provided sufficient evidence that the RV was delivered to the
12 purchaser outside California, and we thus find that the transaction was not subject to sales tax.
13 However, petitioner did not take a timely BOE 447 form or other equivalent statement from any of
14 these California resident purchasers, and petitioner has not otherwise established that the RV in each
15 case was purchased for use outside California. Therefore, for the one transaction we accept was not
16 subject to sales tax, petitioner is liable for the use tax it should have collected and remitted to the
17 Board. For the other three transactions, we would have concluded that petitioner is liable for the use
18 tax it should have collected and remitted to the Board but for our conclusion that the sales were subject
19 to sales tax..

20 **OTHER DEVELOPMENTS**

21 None.

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