

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:)
SHANTILLI, LLC) Account Number: SA U UT 84-100265
Petitioner) Case ID 434838
La Verne, Los Angeles County

Type of Transaction: Purchase of motor home

Date of purchase: 12/22/05

<u>Item</u>	<u>Disputed Amount</u>
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Purchase price of motor home	\$115,577
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Tax as determined and protested	\$ 9,536.00
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Interest through 10/31/11	<u>3,393.23</u>
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Total tax and interest	<u>\$12,929.23</u>
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Monthly interest beginning 11/1/11	<u>\$ 47.68</u>
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This matter was scheduled for Board hearing on March 23, 2011, but was postponed at the Department's request to allow petitioner additional time to provide information for the Department's consideration. It was rescheduled for Board hearing on June 23, 2011 but was postponed at petitioner's request to allow additional time to gather documentation for the hearing.

UNRESOLVED ISSUE

Issue: Whether petitioner's purchase of a motor home is subject to use tax. We find that it is.

Petitioner, a Montana limited liability company whose sole member is Brett Hoffman, a California resident, purchased a motor home on December 22, 2005. The motor home was delivered to petitioner in Arizona by the seller's agent. Petitioner executed forms BOE-447 and 448, certifying that it was purchasing the motor home for use outside California and confirming delivery of the motor home to petitioner outside California. Since title passage occurred outside California, if any tax applies to this transaction, it will be use tax for which petitioner is liable. In January 2006, the California Department of Motor Vehicles issued a "Title Only" certificate for the motor home. During the first twelve months after the purchase, the motor home was at the California dealer for warranty repairs on at least two occasions. Based on these facts, the Sales and Use Tax Department

1 (Department) sent petitioner a consumer use tax return, which petitioner filed, claiming that no tax was
2 due because it did not purchase the motor home for use in California. To support that assertion,
3 petitioner provided various documents with the return and with subsequent correspondence, which the
4 Department found insufficient to support petitioner's claim that the motor home was purchased for use
5 outside California. Accordingly, the Department issued the Notice of Determination in dispute.

6 Petitioner argues that, after delivery, the motor home was only in California for the two
7 warranty services, and has provided: (1) evidence that the motor home was registered in Montana in
8 January 2006; (2) a copy of an insurance policy showing coverage for the motor home and identifying
9 the location of the motor home at petitioner's Montana address for the period December 20, 2005,
10 through December 20, 2006; (3) receipts for food, gasoline, and supplies purchased in Arizona and
11 Nevada during the period January through October 2006; (4) two declarations signed under penalty of
12 perjury by Mr. Hoffman (who, according to petitioner, had exclusive use of the motor home), which
13 include itineraries prepared by Mr. Hoffman; and (5) a notarized statement from Mr. Joe Wilkins that
14 Mr. Hoffman stored the motor home at Mr. Wilkins's home in Mohave Valley, Arizona (about a
15 seven-mile drive to the California border) from December 22, 2005, until December 22, 2006.

16 In response, the Department notes that petitioner brought the motor home into California within
17 12 months from the date of purchase (even if only for warranty repairs) and petitioner gave the motor
18 home to a California resident (Mr. Hoffman) to use. The Department concludes that Mr. Hoffman
19 used the motor home in California more than in any other individual state and thus subjected the motor
20 home to California registration. That conclusion is based primarily on the dealer's records, which the
21 Department found to be the only direct evidence of the motor home's use and location. The
22 Department states that the out-of-state receipts provided by petitioner are not evidence of the motor
23 home's location because they do not identify the motor home, and the statement by Mr. Wilkins does
24 not include the specific dates when the motor home was located in Arizona. In addition, the
25 Department completed a mileage analysis using Mr. Hoffman's declarations, including the itineraries,
26 and found that the described usage of the motor home using the most direct routes (which passed
27 through California) would have required more miles than were added to the odometer during the
28 relevant periods. Therefore, the Department concluded that the odometer readings did not confirm

1 petitioner's claimed use of the motor home outside California. Petitioner asserts that he drove a
2 different route than used by the Department for its calculations and never crossed into California.
3 However, any other route would have been longer and *increased* the discrepancy between petitioner's
4 claimed itinerary and the miles of use supported by odometer readings.

5 As relevant to this appeal, when a vehicle purchased and first functionally used outside
6 California is brought into California within 12 months from the date of purchase, there is a rebuttable
7 presumption that the vehicle was acquired for storage, use, or other consumption in this state, with use
8 tax applicable, if any of the following occur: (1) the vehicle was purchased by a California resident; (2)
9 the vehicle was subject to registration in California during the first 12 months of ownership; or (3) the
10 vehicle was used or stored in California more than one-half of the time during the first 12 months of
11 ownership. (Rev. & Tax. Code, § 6248, subd. (a); Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(A).)
12 This presumption may be controverted by documentary evidence that the vehicle was purchased for
13 use outside of California during the first 12 months of ownership. In this case, the 12-month test
14 period is December 22, 2005, through December 22, 2006.

15 Petitioner took delivery of and first functionally used the motor home outside California and
16 brought it into California within 12 months of purchase (by at least August 15, 2006, the date of the
17 first warranty repair work at dealer's California facility). Petitioner registered the motor home in
18 Montana and then allowed its sole member, Mr. Hoffman, a California resident, to make exclusive use
19 of the motor home. If the motor home was located or operated in California for a greater amount of
20 time than it was located or operated in any other individual state during the applicable test period, the
21 motor home was subject to registration in California. (Veh. Code, § 4000.4.) If so, it is presumed that
22 petitioner purchased the motor home for use in this state. (Rev. & Tax. Code, § 6248, subd. (a)(2).)

23 There is reliable evidence that the motor home was in California for at least 66 days (18
24 percent) of the first 12 months of ownership, while it was at the dealer for warranty repairs. Based on
25 the mileage to various locations where the motor home was driven, we calculate that the motor home
26 was driven in California at least 650 miles during that same period (35 percent of the total miles driven
27 of 1,852). We find that this evidence is more reliable than the evidence provided by petitioner to
28 support its claim that the motor home was primarily or regularly used in Arizona and Nevada during

1 this period. The receipts for food, gasoline, and supplies purchased in Arizona and Nevada do not
2 identify the motor home and are not from motor home-related businesses (e.g., a recreational vehicle
3 campground or supply store), and at least one of the fuel receipts was for a purchase of diesel fuel
4 while the motor home uses unleaded gasoline. Thus, while the receipts might be sufficient to show
5 Mr. Hoffman's locations, they do not establish the location of the motor home.

6 We also find the notarized statement from Mr. Wilkins to be unpersuasive. That statement
7 indicates Mr. Hoffman had permission to park his motor home at Mr. Wilkins's home in Mohave
8 Valley Arizona. However, the statement does not provide particular dates when the motor home was
9 located at his home. Further, it is undisputed that the motor home was not located on Mr. Wilkins's
10 property during the entire 12 months. Therefore, we find the statement by Mr. Wilkins to be overbroad
11 and not helpful in determining exactly how much time the motor home was located or operated in
12 Arizona. Moreover, we find that neither the Montana registration nor the insurance policy showing the
13 location of the motor home in Montana establish the actual location of operation of the motor home.

14 We find the Department has established the motor home was located and operated in California
15 for at least 35 percent of the documented mileage driven during the first 12 months of ownership, and
16 during at least 18 percent of that same period. While 35 percent and 18 percent do not, by any means,
17 constitute a majority, petitioner has not provided evidence to establish location or operation of the
18 motor home for *any* amount of time or mileage outside of California during the 12-month period, much
19 less that the motor home spent a *greater* amount of time in any other *individual* state than it did in
20 California, to show that the vehicle was not subject to registration in California. Consequently, we
21 find that California had a greater claim to registration of the motor home than any other state, including
22 Arizona or Montana. Accordingly, we conclude that the motorhome was subject to California
23 registration beginning with its first operation in California, which occurred by at least August 15, 2006.
24 (Veh. Code, §§ 4000.4, subd. (a), 6700, subd. (c).) As such, the presumption of section 6248 is
25 applicable, and we find that petitioner has not rebutted the presumption.¹

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27 ¹ There is no dispute that petitioner is a one-person LLC whose sole member is a California resident, and the motor home
28 was purchased for that California resident's personal use. Petitioner has provided no evidence that it (the LLC) is anything
but a sham business entity (e.g., no evidence that petitioner conducts any type of business), no evidence that the motor

1 overcome the presumption. We agree. Accordingly, our recommendation remains that the petition
2 should be denied.

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Summary prepared by Thea C. Etheridge, Business Taxes Specialist II