

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:)
DONALD G. SHERIDAN and) Account Number: SA U UT 084-124315
JUDITH C. SHERIDAN) Case ID 486394
Petitioner) Groveland, Tuolumne County

Type of Transaction: Purchase of motor home

Date of purchase: 02/04/08

<u>Item</u>	<u>Disputed Amount</u>
Purchase price of motor home	\$182,868
Relief of interest	\$ 3,624 ¹
Tax determined and protested	\$13,257.00
Interest through 10/31/11	<u>3,623.58</u>
Total tax and interest	<u>\$16,880.58</u>
Monthly interest beginning 11/01/11	<u>\$66.29</u>

UNRESOLVED ISSUE

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

Petitioner, a husband and wife who are California residents, entered into a contract to purchase a motor home on January 18, 2008. On February 4, 2008, the seller's agent delivered the motor home to petitioner in Arizona. 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. On March 14, 2008, the California Department of Motor Vehicles issued a registration certificate for the motor home listing a California address. The motor home was brought back to California by the dealer for warranty repairs on or

¹ This is the total interest accrued to date. Based on petitioner's request for relief, petitioner might be seeking relief of some lesser amount.

1 about March 14, 2008. Based on these facts, the Sales and Use Tax Department (Department) sent
2 petitioner a letter requesting information pertaining to the motor home purchase.

3 By letter, petitioner claimed that the motor home was not purchased for use in California, but
4 due to mechanical problems, the motor home was returned to California where it stayed at the
5 dealership for 128 days between February 2008² and July 2008. Petitioner further states that, in
6 between repairs, and after a trip to Oregon and Washington in August 2008, petitioner kept the motor
7 home in California. Based on the available information, the Department found that petitioner failed to
8 establish that the motor home was purchased for use outside California. Accordingly, the Department
9 issued the Notice of Determination in dispute.

10 Petitioner argues that it had intended to use the motor home outside of California in excess of
11 90 days; but discovered after purchase that the motor home needed extensive repairs.³ Petitioner
12 maintains that it had instructed the dealer to take the vehicle for repairs to the dealer's repair facility in
13 Arizona, not California, and because the dealer, not petitioner, brought the motor home back into
14 California, the dealer should be liable for the tax. After the appeals conference, petitioner provided a
15 letter dated September 29, 2010, from Bruce Rossio, an individual who attests that, based on
16 conversations with petitioner, petitioner did not intend to use the motor home primarily in California.
17 Mr. Rossio states that he invited petitioner to stay at his home in Arizona after petitioner accepted
18 delivery of the motor home and that he drove the motor home to the RV storage facility in Arizona
19 when Mr. Sheridan became ill. Mr. Rossi also states he learned that the dealer had taken the motor
20 home from the RV storage to its repair facility in Arizona.⁴ Petitioner also provided a copy of the
21 lease agreement dated February 8, 2008 with the RV storage facility in Arizona.

22 As relevant to this appeal, when a vehicle purchased and first functionally used outside
23 California is brought into California within 90 days after the date of purchase, excluding time of
24 _____

25 ² Petitioner stated that, according to the dealer, the motor home was transported to California for repairs on or about
26 February 11, 2008. However, the dealer repair invoice is dated March 14, 2008, which is the date of entry used by the
27 Department.

28 ³ Petitioner filed a lawsuit against the dealer and manufacturers of the motor home for breach of warranty, and provided a
copy of the complaint filed October 30, 2008 with the United States District Court. We note that even if petitioner prevails
and receives full restitution, Civil Code 1793.2 and Regulation 1655 do not relieve petitioner of its liability for the use tax
on the motor home.

⁴ Petitioner acknowledges that the dealer in fact took the motor home to California for repairs.

1 shipment or storage for shipment to California, there is a rebuttable presumption that the vehicle was
2 acquired for storage, use, or other consumption in this state, and thus use tax is applicable. This
3 presumption may be rebutted by documentary evidence that the vehicle was used, stored, or both used
4 and stored outside of California one-half or more of the time during the six-month period immediately
5 following its entry into this state. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(4).) Based on the best
6 available evidence the 6-month test period in this case is March 14, 2008, through September 14, 2008
7 (184 days).

8 It is undisputed that petitioner took delivery of and first functionally used the motor home
9 outside California and that the motor home entered California within 90 days of the purchase. Based
10 on repair work orders, the vehicle was at the dealership in California a total of 144 days between
11 March 14, 2008, through August 5, 2008, a fact that petitioner does not dispute. In fact, petitioner
12 acknowledges that the motor home remained in California until August 2008 when petitioner drove the
13 motor home on a trip to the Pacific Northwest. Accordingly, we find the motor home remained in
14 California more than one-half the time during the test period ($144 \text{ days} \div 184 \text{ days} = 78 \text{ percent}$) and
15 therefore conclude that the motor home was purchased for use in California.

16 Petitioner maintains that the motor home was purchased with the intent to travel the United
17 States until mid-June or early July 2008, and that the condition of the motor home and the dealer's
18 decision to bring the motor home into California were outside petitioner's control. Under certain
19 circumstances, the presumption that property brought into California was purchased for use in this
20 state may be rebutted if it can be demonstrated that the vehicle was purchased with the intention to use
21 it outside this state. (Bus. Tax. Law Guide, annot. 570.0940 (3/31/07).) Here, petitioner concedes that
22 it intended to return the mobile home to California. An intent to retain a vehicle outside the state for
23 more than 90 days of use prior to returning it to California is *not* an intent that will overcome the
24 presumption. Since petitioner has not established, or even alleged, that the intent was to use the motor
25 home exclusively outside California and since the motor home was brought into California within 90
26 days of purchase and remained in the state for more than one-half of the next six months, use tax is
27 applicable.

28 **Issue 2:** Whether interest should be relieved. We conclude that relief is not warranted.

