

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 JASWANT S. SRA) Account Number: SA V UT 084-111815
 6 Petitioner) Case ID 437185
) Union City, Alameda County

7 Type of Transaction: Purchase of a refrigerated trailer

8 Purchase date: June 27, 2005

9 Item Disputed Amount

10 Truck trailer purchase \$51,098

11 Tax as determined: \$4,515.00

12 Adjustment - Sales and Use Tax Department -43.92

13 Proposed redetermination, protested \$4,471.08

14 Proposed tax redetermination \$4,471.08

15 Interest through 9/30/10 2,127.43

16 Total tax and interest due \$6,598.51

17 Monthly interest beginning 10/1/10 \$26.08

18 This matter was previously scheduled for Board hearing on April 13, 2010, but petitioner did
 19 not respond to the Notice of Hearing. Accordingly, the Board Proceedings Division informed
 20 petitioner that this matter would be presented to the Board for decision without oral hearing.
 21 Subsequently, petitioner contacted the Board Proceedings Division and explained that he could not
 22 respond to the Notice of Hearing because he had a family emergency and was traveling out of the
 23 country. Petitioner indicated that he would like to have an oral hearing before the Board. This matter
 24 was then scheduled for Board hearing on July 14, 2010, but petitioner requested postponement so that
 25 his representative could appear with him at the Board hearing.

24 UNRESOLVED ISSUE

25 **Issue:** Whether petitioner purchased the subject trailer for use in California. We conclude that
 26 petitioner purchased the trailer for use in California and that the use is taxable.

27 Petitioner resides in California and purchased the subject trailer on June 27, 2005, from Utility
 28 Trailer Sales Company of Arizona (UTS), located in Phoenix, Arizona. UTS shipped the trailer to

1 petitioner by third-party carrier. The sale occurred in Arizona at the time the trailer was shipped from
2 that state (Cal. UCC, § 2401; Cal. Code Regs., tit. 18, § 1628, subd. (b)(3)(D)), and thus the applicable
3 tax, if any, is use tax owed by petitioner (Rev. & Tax. Code, §§ 6201, 6202). Resolution of this
4 dispute depends on whether the trailer was delivered to petitioner in Nevada or in California.

5 On August 3, 2005, petitioner submitted an application to register the trailer in California and
6 paid the applicable fees. On or about September 7, 2005, petitioner submitted form BOE-106,
7 *Vehicle/Vessel Use Tax Clearance Request*, indicating a purchase date of either June 28 or 29, 2005
8 (the handwriting is unclear), that the trailer first entered California on June 30, 2005, and certifying
9 that, if requested to do so, he would send the paperwork to support a use tax exclusion. The Board
10 then issued a *Certificate of Vehicle, Mobilehome, or Commercial Coach Use Tax Clearance* for the
11 trailer on September 15, 2005.

12 By letter dated June 5, 2007, the Board's Consumer Use Tax Section requested that petitioner
13 submit documents showing that the trailer was not purchased for use in California. Petitioner
14 furnished an "Affidavit of out of State Delivery" that identified a delivery location for the trailer in Las
15 Vegas, Nevada. A portion of the affidavit form was completed and apparently executed by an
16 employee of UTS on September 8, 2005, more than two months after delivery and contemporaneous
17 with petitioner's form BOE-106 submission to the Board. The document certifies "to the delivery or
18 *the intent of delivery*" to a Nevada location but does not certify the actual delivery place and date. The
19 affidavit contains a separate delivery certification to be signed by the purchaser at the time of delivery,
20 which is not executed. Petitioner also sent documents to support the trailer's use in interstate
21 commerce during the six-month period following its entry into California, including documentation of
22 a load the trailer picked up in Henderson, Nevada on June 28, 2005, for delivery to Lathrop, California.
23 It is undisputed that petitioner used the trailer for interstate commerce, and that more than one-half of
24 the miles the trailer traveled during the six-month period following its entry into California, were
25 commercial miles traveled in interstate commerce. (See Cal. Code Regs., tit. 18, § 1620, subd.
26 (b)(5)(C)1.) Thus, if petitioner were to establish that the first functional use of the trailer did not occur
27 in California, California use tax would not apply. If, however, the trailer was first functionally used in
28 this state, use tax does apply. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(A).)

1 The Department requested UTS to furnish delivery documents related to petitioner's trailer
2 purchase. UTS provided a third-party freight bill and delivery receipt that identifies the trailer and
3 confirms delivery on June 28, 2005, in Ontario, California. The delivery receipt indicates that UTS's
4 agent, Mark Fiala, executed the document as the "shipper" on June 27, 2005, and that petitioner's truck
5 driver, Dave Edrial, confirmed that he received the trailer at a T/A Truck Stop, in Ontario, the
6 following day. UTS also furnished a declaration under penalty of perjury from Mark Fiala to
7 corroborate the June 28, 2005 delivery date and Ontario, California delivery location.

8 Based on the documents provided by UTS, the Department concluded the trailer was delivered
9 to petitioner in California, and the trailer's first functional use was in California, when the trailer was
10 dispatched on the date of delivery to pick up a load in Henderson, Nevada. Thus, the Department
11 concluded that petitioner purchased the trailer for use in California and that use tax applies.

12 Petitioner contends that the trailer was delivered in Las Vegas, Nevada on June 28, 2005, as
13 evidenced by the Affidavit of out of State Delivery, and that the first functional use of the trailer was a
14 trip within Nevada, on June 28, 2005, from Las Vegas to Henderson, to pick up a load for delivery to
15 Lathrop, California. If petitioner were to establish such delivery in Nevada, then we would agree that
16 use tax does not apply because first functional use would have occurred outside California and
17 petitioner's use of the trailer would have satisfied the requirements of California Code of Regulations,
18 title 18, section 1620, subdivision (b)(5)(C)1. However, we find that the trailer was delivered to
19 petitioner in California.

20 Petitioner provided an incomplete, after-the-fact delivery affidavit, which we find is, at best, an
21 indication that petitioner had originally intended to have the trailer delivered to Nevada. The
22 completed delivery documents from the third-party carrier, signed by petitioner's truck driver on
23 petitioner's behalf and reflecting delivery in California, coupled with the retailer's information and
24 affidavit corroborating a California delivery, outweigh petitioner's incomplete, late, and ambiguous
25 affidavit. Therefore, we find that petitioner took delivery of the trailer in California on June 28, 2005,
26 and, on that same day, the trailer was dispatched from California to Henderson, Nevada to pick up
27 cargo. Accordingly, we find petitioner first functionally used the trailer in California on June 28, 2005.
28 Since the trailer was first functionally used in this state, we conclude that petitioner purchased the

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trailer for use in California and owes use tax on the purchase price of the trailer, regardless of petitioner's subsequent use of the trailer. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(A).)

OTHER DEVELOPMENTS

None.

Summary prepared by Rey Obligacion, Retired Annuitant