

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
JASWANT S. SRA ) Account Number: SA V UT 084-111815  
Petitioner ) Case ID 437185  
Union City, Alameda County

Type of Transaction: Purchase of a refrigerated trailer

Purchase date: June 27, 2005

<u>Item</u>	<u>Disputed Amount</u>
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Truck trailer purchase	\$51,098
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Tax

Tax as determined:	\$4,515.00
Adjustment - Sales and Use Tax Department	<u>-43.92</u>
Proposed redetermination, protested	<u>\$4,471.08</u>
Proposed tax redetermination	\$4,471.08
Estimated interest through 4/30/10	<u>1,997.03</u>
Total tax and interest due	<u>\$6,468.11</u>
Monthly interest beginning 5/1/10	<u>\$26.08</u>

**UNRESOLVED ISSUE**

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

Petitioner, an individual residing in California, purchased the trailer on June 27, 2005, from Utility Trailer Sales Company of Arizona (UTS), located in Phoenix, Arizona who shipped the trailer to petitioner by third-party carrier. The sale occurred in Arizona at the time the trailer was shipped from that state (Cal. UCC, § 2401; Cal. Code Regs., tit. 18, § 1628, subd. (b)(3)(D)), and thus the applicable tax, if any, is use tax owed by petitioner (Rev. & Tax. Code, §§ 6201, 6202). Resolution of the dispute depends on whether the trailer was delivered to petitioner in Nevada or in California.

On August 3, 2005, petitioner submitted an application to register the trailer in California and paid the applicable fees. On or about September 7, 2005, petitioner submitted form BOE-106,

1 *Vehicle/Vessel Use Tax Clearance Request*, to the Board of Equalization<sup>1</sup> and certified that he would  
2 send the paperwork to support a use tax exclusion, upon request, after six months.<sup>2</sup> The Board then  
3 issued a *Certificate of Vehicle, Mobilehome, or Commercial Coach Use Tax Clearance* for the trailer  
4 on September 15, 2005. By letter dated June 5, 2007, the Board's Consumer Use Tax Section  
5 requested that petitioner submit documents showing that the trailer was not purchased for use in  
6 California based on petitioner's BOE-106 filing. Petitioner furnished an "Affidavit of out of State  
7 Delivery" that identified a delivery location for the trailer in Las Vegas, Nevada. A portion of the  
8 affidavit form was completed and apparently executed by an employee of UTS on September 8, 2005,  
9 more than two months after delivery and contemporaneous with his form BOE-106 submission to the  
10 Board. The document certifies "to the delivery or *the intent of delivery*" to a Nevada location but does  
11 not certify the actual delivery place and date. The affidavit contains a separate delivery certification to  
12 be signed by the purchaser at the time of delivery that is not executed. Petitioner also sent documents  
13 to support the trailer's use in interstate commerce during the six-month period following its entry into  
14 California, including documentation of a load the trailer picked up in Henderson, Nevada on June 28,  
15 2005, for delivery to Lathrop, California. It is undisputed that petitioner used the trailer for interstate  
16 commerce, and that more than one-half of the miles the trailer traveled during the six-month period  
17 following its entry into California, were commercial miles traveled in interstate commerce. (See Cal.  
18 Code Regs., tit. 18, § 1620, subd. (b)(5)(C)1.) Thus, if petitioner were to establish that the first  
19 functional use of the trailer did not occur in California, California use tax does not apply; if, however,  
20 the trailer was first functionally used in this state, use tax does apply. (Cal. Code Regs., tit. 18, § 1620,  
21 subd. (b)(5)(A).)

22 The Department requested UTS to furnish delivery documents related to petitioner's trailer  
23 purchase. UTS provided a third-party freight bill and delivery receipt that identifies the trailer and  
24 confirms delivery on June 28, 2005, in Ontario, California. The delivery receipt indicates that UTS's  
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26 <sup>1</sup> The form indicated a purchase date of either June 28 or 29, 2005 (the handwriting is unclear), and that the trailer first  
27 entered California on June 30, 2005.

28 <sup>2</sup> Petitioner was likely referring to the "interstate or foreign commerce" exception six-month test for vehicles not purchased  
for use in this state. (See Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(C).)

1 agent, Mark Fiala, executed the document as the “shipper” on June 27, 2005, and that petitioner’s truck  
2 driver, Dave Edrial, confirmed that he received the trailer at a T/A Truck Stop, in Ontario, the  
3 following day. UTS also furnished a declaration under penalty of perjury from Mark Fiala to  
4 corroborate the June 28, 2005 delivery date and Ontario, California delivery place.

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

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

18 Petitioner provided an incomplete, after-the-fact delivery affidavit, which we find is, at best, an  
19 indication that petitioner had originally intended to have the trailer delivered to Nevada. The  
20 completed delivery documents from the third-party carrier, signed by petitioner’s truck driver on  
21 petitioner’s behalf and reflecting delivery in California, coupled with the retailer’s information and  
22 affidavit corroborating a California delivery, outweigh petitioner’s incomplete, late, and ambiguous  
23 affidavit. Therefore, we find that petitioner took delivery of the trailer in California on June 28, 2005,  
24 and, on that same day, the trailer was dispatched from California to Henderson, Nevada to pick up  
25 cargo. Accordingly, we find petitioner first functionally used the trailer in California on June 28, 2005.  
26 Since the trailer was first functionally used in this state, we conclude that petitioner purchased the  
27 trailer for use in California and owes use tax on the purchase price of the trailer, regardless of  
28 petitioner’s subsequent use of the trailer. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(A).)

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**OTHER DEVELOPMENTS**

None.

Summary prepared by Rey Obligacion, Business Taxes Specialist III, Retired