STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

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: ALLYN F. TAYLOR & GEORGETTA TAYLOR Petitioners	Account Number: SR KHO 100-974678 Case ID 465848 Auberry, Fresno County

Type of Transaction: Purchase of motor home

Date of purchase: 03/19/2004

Item	Disputed Amount
Purchase of motor home	$83,296
Failure-to-file penalty	$ 666

	Tax	Penalty
As determined and protested:	$6,559.56	$655.96
Proposed tax redetermination	$ 6,559.56	
Interest through 4/30/10	3,520.28	
10% penalty for failure to file a return	655.96	
Total tax, interest, and penalty	$10,735.80	
Monthly interest beginning 5/1/10	$ 38.26	

UNRESOLVED ISSUES

Issue 1: Whether petitioners purchased the subject motor home for use in California. We conclude that they did, and the purchase is subject to use tax.

On March 15, 2004, petitioners, residents of California, entered into an agreement to purchase a motor home from a California dealer. On March 19, 2004, the dealer delivered the motor home to petitioners in Verdi, Nevada, and on that same date, Mr. Taylor signed a statement certifying that delivery took place outside California and that the vehicle was purchased for use outside California. The dealer registered the motor home with the California Department of Motor Vehicles (DMV) on petitioners' behalf, but petitioners did not pay an amount as tax to the dealer or to DMV.

Petitioners brought the motor home back into California almost immediately because they found repairs were needed. The dealer's records indicate that the motor home was in Fresno by March 23, 2004. The Sales and Use Tax Department (Department) asked petitioners to establish that the

motor home had been outside California at least one-half of the six-month period March 23, 2004, through September 23, 2004. Petitioners provided: 1) their written statement that they purchased the motor home as a temporary residence for Ms. Holly Hicks while she attended school in Reno; 2) a statement from Mr. Bill Boland that the motor home had been parked on his property in Reno, Nevada from March 26, 2004, through January 5, 2005; and 3) a college transcript for Ms Hicks from the Nevada Career Academy in Sparks, Nevada. The Department reviewed the documentation and concluded it did not establish that the motor home was outside California for more than one-half of the six-month test period. The Department notes that a repair order prepared by a California dealer shows that the motor home was in California on May 15, 2004, and that the college transcript is evidence that Ms. Hicks attended college in Reno but not that she lived in the motor home. Further, the Department states that the number of miles on the motor home's odometer were not sufficient to show that, after delivery, it was driven from Verdi, Nevada to Fresno (in March 2004), then back to Reno, and then made a second round-trip between Reno and Fresno in May 2004. In other words, the Department found that the mileage on the odometer does not support petitioners' description of their use of the motor home. Accordingly, the Department concluded that the motor home had been purchased for use in California and that petitioners owe the disputed use tax.

Petitioners contend that the use tax is not due because the motor home was purchased for use outside California and was returned to California for repairs only, not for recreational purposes.[1] Petitioners assert that the purchase and use are qualified for exclusion from use tax because the motor home was outside California for more than one-half of the six months after it was brought into California. In that regard, petitioners maintain that Ms. Hicks lived in the motor home, which was

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[1] We note that California Code of Regulations, title 18, section (Regulation) 1620, subdivision (b)(5)(B), provides a limited exception for vehicles brought into this state for the purpose of repair or warranty service, but that exception is inapplicable because it did not become operative until September 20, 2006. We note also that the exception was adopted to address an issue presented by virtue of a change as to when a vehicle is presumed to have been purchased for use in California, and how to overcome that presumption. The repair exception applies (operative September 20, 2006) only when the time in California is exclusively for repairs, totaling no more than 30 days. For petitioners to overcome the presumption that is applicable *here*, they need only establish that the motor home was outside California one-half or more of the time during the six-month period following its entry into this state. Thus, if they could establish that the motor home was in California for 30 days or less during the six-month period after the motor home first entered California, they would prevail, without regard to the reason for the motor home's presence in California. The problem for petitioners is that they cannot provide documentation to support their claimed use of the motor home.

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parked on Mr. Boland's property in Reno, for more than one-half of the six-month period. In response to the Department's analysis of the mileage on the odometer, petitioners state that they travelled a shorter alternate route from Reno to Fresno and back, and therefore the mileage does not contradict their description of their use of the motor home. Further, petitioners state that they would have retained more complete documentation of their use if they had known such evidence was required. Mr. Taylor stated at the appeals conference that he was unaware of the presumption that the motor home was purchased for use in California if it was brought into California within 90 days of the out-of-state delivery. Mr. Taylor states that, because he is dyslexic, he was not able to read all of the documents presented to him by the seller at the time of purchase and delivery of the motor home and therefore did not realize that the form he signed on March 19, 2004, specifically stated the presumption and explained that it could be rebutted if the vehicle was used or stored outside of California for at least half of the six-month period following the date the vehicle was brought into California.

It is undisputed that the motor home was delivered outside California and was brought into this state within 90 days after delivery. In order to show that the motor home was purchased for use outside California, petitioners have to document that it was used or stored outside California at least one-half of the six-month period March 23, 2004, through September 23, 2004.

Petitioners completed a form BOE-504-C regarding their use of the motor home, indicating that it entered California on a permanent basis on either "8-26-04" or "9-26-04" (it is not clear if the month is reflected by an 8 or a 9). Thus, Mr. Boland's statement that the motor home was parked on his property in Reno until January 2005 is contradicted by petitioners' statement. With respect to the transcript for Ms. Hicks, not only does it not show use of a motor home, we note that it shows an address of 1881 Fargo, Sparks, Nevada, while Mr. Boland's address is 977 Eden Court, Reno, Nevada. In addition, petitioners have not provided any evidence of purchases of fuel and supplies on the alleged trips to and from Nevada in March and May 2004. Thus, we find that the documentation provided by petitioners is conflicting and unpersuasive. Further, we have recalculated the number of miles driven, using the alternate route described by petitioners, and our conclusion remains that the number of miles on the odometer is not sufficient to support petitioner's description of the trips from Nevada to California for repairs. For all these reasons, we find that petitioners have not established that the motor

home was outside California at least one-half of the time during the six-month test period. Accordingly, we find that they purchased the motor home for use in California, and that use tax applies.

Issue 2: Whether relief of the failure-to-file penalty is warranted. We find no basis for relief.

Since petitioners did not file a return and report their purchase and use of the motor home, the Notice of Determination issued by the Department included a 10-percent penalty for failure to file a return. Petitioners have submitted a declaration, signed under penalty of perjury, requesting relief of the penalty under Revenue and Taxation Code section 6592, on the basis that they were not aware of any tax liability because they were not told they had to keep the motor home outside of California for any length of time.

As noted previously, Mr. Taylor signed a statement on March 19, 2004, which described the presumption that the motor home was purchased for use in California if it was brought into this state within 90 days, and explained how the presumption could be rebutted. That statement was signed under penalty of perjury. Mr. Taylor states he is dyslexic and argues that he did not have the capacity to read and understand what he was signing. He asserts that no one ever told him that the motor home had to stay outside of California for any length of time.

We find that, since Mr. Taylor was aware of his condition, he should have asked for clarification regarding the statement he signed. If Mr. Taylor knowingly signed a document that he could not read, he did not exercise reasonable care. Thus, we find petitioners' failure to file a return was not the result of reasonable cause and circumstances beyond petitioners' control, and there is no basis to recommend relief of the penalty.

OTHER DEVELOPMENTS

None.

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

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