

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:)
TEAM DENNIS CONNER CORPORATION) Account Number: SB G UT 84-055589
Case ID 353247
Petitioner) San Diego, San Diego County

Type of Transaction: Purchase of a racing yacht

Date of Purchase: February 18, 2002

<u>Protested Items</u>	<u>Disputed Amount</u>
Purchase price	\$1,511,429
Amnesty Interest Penalty	\$7,370
	<u>Tax</u>
As determined, protested	<u>\$117,136.00</u>
Proposed tax redetermination	\$117,136.00
Interest through 2/28/10	68,524.63
Amnesty interest penalty	<u>7,369.81</u>
Total tax, interest, and penalty	<u>\$193,030.44</u>
Monthly interest beginning 3/1/10	<u>\$683.29</u>

This matter was scheduled for Board hearing on April 29, 2009, but was postponed because petitioner’s representative requested additional time to prepare for the oral hearing and to submit an opening brief. This matter was rescheduled for Board hearing on July 1, 2009, but petitioner did not submit an opening brief. However, this matter was again postponed because petitioner submitted a settlement proposal, but the settlement negotiations were not successful.

UNRESOLVED ISSUE

Issue: Whether the subject vessel was purchased for use in California, and if so, whether that use was exempt from tax. We conclude that petitioner purchased the vessel for use in California and that no exemption applies.

Petitioner is a San Diego, California, based corporation that was formed for the purpose procuring vessels to compete in the America’s Cup international yacht race. The vessel at issue was a

1 2002 custom-made racing yacht (Stars and Stripes USA 66) that was purchased from New England
2 Boatworks, Inc., of Portsmouth, Rhode Island, on February 18, 2002. Petitioner provided an “Offshore
3 Delivery Affidavit” indicating that the vessel departed from the port of Los Angeles while under the
4 control of the seller and was delivered to petitioner outside the territorial waters of this state, and then
5 returned to California. Petitioner kept the vessel docked at Terminal Island, California from where the
6 vessel was towed by a chase boat outside the territorial waters of California for training exercises and
7 towed back into port after such exercises. Apparently, on February 23, 2002, a few days after the
8 purchase, the vessel’s mast was damaged and was sent to the manufacturer in Minden, Nevada for
9 repairs. While the mast was being repaired, the vessel remained docked in Terminal Island and all
10 training exercises were suspended. The mast was returned to California on May 2, 2002, and the
11 training exercises resumed. On August 7, 2002, the vessel was shipped to New Zealand from the port
12 of Los Angeles and arrived in New Zealand as early as August 20, 2002. Petitioner asserts that the
13 vessel did not return to California after it was shipped to New Zealand.

14 The Sales and Use Tax Department (Department) accepted the affidavit as evidence that the
15 seller delivered the vessel to petitioner outside California and concluded that the purchase was subject
16 to use tax under Revenue and Taxation codes sections 6201 and 6202, since the purchase occurred
17 outside California, and since, the Department concluded, the vessel was purchased for use in this state.

18 Petitioner argues three bases against the application of tax. Petitioner argues that the vessel
19 was used or stored outside of California one-half or more of the time during the six-month period
20 immediately following its entry into California (Cal. Code Regs., tit. 18, § 1620, subd. (b)(4)(A)), or
21 that one-half or more of the nautical miles traveled by the vessel during the six-month period
22 immediately following its entry into the state, were commercial miles traveled in interstate or foreign
23 commerce (Cal. Code Regs., tit. 18, § 1620, subd. (b)(4)(B)(2)). Petitioner argues that the use of the
24 vessel qualifies for the watercraft exemption under Revenue and Taxation Code section 6368 because
25 the vessel was used exclusively or principally in the transportation of persons or property for hire in
26 interstate or foreign commerce. Finally, petitioner argues that, since it merely *stored* the vessel in
27 California at night and only used the vessel outside California before it was transported to New
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1 Zealand from where it never returned, the exclusion from use tax under Revenue and Taxation Code
2 section 6009.1 applies.

3 There is a rebuttable presumption that the vessel which petitioner brought into this state was
4 purchased for use here (Rev. & Tax. Code, § 6246), and petitioner owes use tax on its purchase and
5 use of the vessel in this state unless it can rebut the presumption or otherwise establish an applicable
6 exemption or exclusion. (Rev. & Tax. Code, §§ 6201, 6202.) The law defines the term “storage” to
7 include the keeping or retention of tangible personal property in this state for any purpose except the
8 sale in the regular course of business (Rev. & Tax. Code, § 6008), and “use” is defined to include the
9 exercise of any right or power over tangible personal property incident to the ownership of that
10 property, except the sale in the regular course of business (Rev. & Tax. Code § 6009).

11 Even if we accepted petitioner’s allegation that all training hours were outside California, the
12 total of the training hours¹ and the time after the vessel departed California on August 7, 2002, through
13 the end of the six- month test period on August 18, 2002, the vessel would have been inside California
14 for more than 75 percent of the time during the six month test period. (The test period consisting of
15 181 days, or 4,344 hours, and the out-of-California use was no more than 1009 hours.) Thus, since the
16 vessel was not used or stored outside California for at least one-half of the time during the test period,
17 petitioner has not overcome the presumption that the vessel was purchased for use here.

18 As to the six-month test for commercial use in interstate or foreign commerce in subdivision
19 (b)(4)(B)2., petitioner has not submitted any proof, or even alleged, that the vessel traveled between
20 California and different states or countries or that the passengers who were on board during the
21 training exercises were picked up as part of a continuous journey to or from another state or country.
22 The mere fact that the crew members or passengers on board may have been from different states or
23 countries is not relevant since the *vessel itself* must have traveled to different states or countries, or
24 carried the passengers or property as part of a continuous journey between California and different
25 states or countries. Nor has petitioner established that any of the miles traveled by the vessel were for
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27 ¹ Seven hours per training day, with no training between February 24, 2002, when the mast was sent for repairs and May 2,
28 2002, when training resumed through August 7, 2002, when the vessel departed California.

1 avoid amnesty-related penalties, and providing the Board's website address and toll free number in the
2 event that petitioner had any questions. Nevertheless, petitioner failed to participate in the amnesty
3 program. Thus, the amnesty interest penalty imposed pursuant to section 7074, subdivision (a), will
4 apply when the liability becomes final.

5 Petitioner submitted a request for relief of this penalty in which it raises the same arguments
6 discussed above. Petitioner also asserts that it relied on the opinion from the Board's legal staff and in
7 good faith believed that it complied with the legal opinion and spirit of the law.

8 The legal opinion cited by petitioner was very clear that petitioner would be presumed to have
9 purchased the vessel for use in this state, and the burden would be on petitioner to document that the
10 vessel was outside California for one-half or more of the time during the six-month test period. The
11 opinion also unequivocally rejected any possibility that the section 6009.1 exclusion would be
12 applicable and restated that use tax would apply if petitioner failed to overcome the presumption that
13 the vessel was purchased for use in this state. Thus, petitioner could not have reasonably relied on the
14 opinion to believe it did not owe tax, which is presumably the reason it has not argued that the opinion
15 forms the basis for relief under Revenue and Taxation Code section 6596.

16 In any event, even if the letter did provide some basis for petitioner to believe tax was not due,
17 that would not establish reasonable cause for petitioner's failure to participate in the amnesty program,
18 which was adopted to encourage taxpayers to pay their tax deficiencies, *including* those subject to
19 pending appeals, that is, even where the taxpayer believed that the asserted tax was not due. Petitioner
20 was advised of the amnesty program and could have, and should have participated. It declined to do
21 so. We find that petitioner has not shown reasonable cause for its failure participate in the amnesty
22 program, and we therefore recommend that relief of the amnesty interest penalty be denied.

23 OTHER DEVELOPMENTS

24 None.

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