

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Claim for Refund and)
 4 Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5) Account Number SR CH 21-849332
 6 RALPH LOUIS TOCCI, dba Tocci Yachts) Case ID's 460529, 468214
 6 Petitioner/Claimant) Pittsburg, Contra Costa County

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 8 Type of Business: Yacht broker
 9 Audit and Claim period: 07/01/04 – 06/30/07¹

10 <u>Item</u>	10 <u>Disputed Amount</u>		
11 Selling price of boats on which use tax was collected			\$380,000
11 Claimed refund			\$ 15,836
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>
	<u>07/01/04 – 12/31/04</u>		<u>01/01/05 – 06/30/07</u>
14 As determined	\$18,007.50	\$1,800.75	\$39,619.38
14 Post-D&R adjustment	- 12,195.00	-1,219.50	- 16,431.88
15 Proposed redetermination, protested			<u>\$23,187.50</u>
15 Adjusted determination	<u>\$ 5,812.50</u>	<u>\$ 581.25</u>	
16 Proposed tax redetermination			\$23,187.50
17 Adjusted tax	\$5,812.50		
17 Interest through 06/30/12	1,700.15		<u>10,818.16</u>
18 Finality penalty	<u>581.25</u>		
19 Total tax, interest, and penalty	\$8,093.90		\$34,005.66
19 Payments	- 8,093.90		- 7,742.44
20 Balance Due	<u>\$ 00.00</u>		<u>\$26,263.22</u>
21 Monthly interest beginning 07/01/12			<u>\$ 77.23</u>

22 **UNRESOLVED ISSUE**

23 **Issue:** Whether adjustments are warranted to the audited measure of use tax collected, but not
 24 reported, with respect to sales of vessels. We find no further adjustment is warranted.

25 Petitioner is a yacht broker who held a seller's permit from April 1990 through December
 26 2009. In the audit, the Sales and Use Tax Department (Department) found that petitioner had collected

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 28 ¹ Two Notices of Determination were issued to prevent the passage of the statute of limitations.

1 use tax that he had not reported to the Board with respect to sales of six documented vessels. After the
2 appeals conference, the Department conceded petitioner had not collected tax with respect to three of
3 those transactions. Accordingly, the measure of tax remaining in dispute relates to three transactions.

4 Petitioner has filed a timely petition for redetermination for the period January 1, 2005, through
5 June 30, 2007 (468214). With respect to the period July 1, 2004, through December 31, 2004,
6 petitioner did not file a timely petition for redetermination, but he did file a timely claim for refund for
7 a payment of \$15,836.34, which was originally applied to the earlier period (460529). After the post-
8 D&R adjustments, the determination for the earlier period is paid in full, and \$7,742.44 of the payment
9 has been applied to the later period.

10 Petitioner contends that, for two of the three disputed transactions (purchases by Mark Harrison
11 and Tim Kelly), he was not the broker and instead merely handled the financing. As for the third sale,
12 to Edward Swihart, petitioner concedes he was the broker but argues that he did not collect any tax.
13 According to petitioner, when a purchaser chose to obtain a loan through petitioner, part of the loan
14 application process required him to complete a security agreement or similar document that included
15 tax, computed at 8.25 percent, as one item of the amount being financed. Petitioner states that the
16 lenders required that he execute the security agreements as the seller, take title from the prior owner at
17 a nominal sum of \$1, and pass title from himself to the purchaser, to conform the chain of title to the
18 requirements set forth in the security agreement. He further states that, when he arranged financing for
19 vessels, all funds went through his trust account, but he retained only his broker's fee and a loan
20 origination fee. After he paid off the seller's mortgage and any other authorized charges, paid the
21 remainder of the purchase price to the seller, and deducted the loan origination fees and broker's fee,
22 he refunded the remaining loan proceeds to the purchaser. Petitioner adamantly asserts that, although
23 the loan proceeds included amounts identified as payment of taxes, he did not "collect" tax. He further
24 claims the purchasers understood and acknowledged that they would owe use tax, which would be
25 billed to them directly by the Board.

26 Regarding the purchase by Mr. Swihart, the evidence shows that, although he purchased a
27 vessel for \$75,000, petitioner collected from the lender, on behalf of Mr. Swihart, loan proceeds based
28 on a selling price of \$100,000, along with tax of \$8,250. All loan proceeds were deposited in

1 staff to have said, but we note that even after full payment of all amounts due, collection staff would
2 have no authority to relieve the penalty without, at a minimum, a request for relief of that penalty
3 explaining the basis for the request, signed under penalty of perjury. In any event, we thereafter
4 reminded the representative of the need to actually file a request for relief for us to consider whether to
5 recommend such relief. Since petitioner has not filed such a request, we have no basis to consider
6 recommending relief of the finality penalty.

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