

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
4 Under the Sales and Use Tax Law of:)

5 DANIEL WALLACE and GRISEL M. WALLACE)

6 Petitioners)

Account Number SP I UT 84-096997

Case ID 420232

Stevenson Ranch, Los Angeles County

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8 Type of Transaction: Purchase of aircraft

9 Date of Transaction: 12/12/03

10 Item Disputed Amount

11 Relief of interest \$4,966

12 Tax as determined \$6,765.00

13 Pre-D&R adjustment 1,066.00

14 Proposed tax redetermination \$7,831.00

Interest through 07/31/12 4,966.0914 Total tax and interest \$12,797.0915 Monthly interest beginning 08/01/12 \$ 39.15

16 UNRESOLVED ISSUE

17 **Issue:** Whether relief of interest is warranted. We find relief is not warranted.18 Petitioners purchased an aircraft in December 2003 from two individuals who were residents of
19 Arizona and Colorado. The sale occurred outside California, so any tax applicable to this transaction is
20 use tax for which petitioners are liable (additionally, the sellers did not hold, and were not required to
21 hold, a California seller's permit for sales of aircraft). Petitioners flew the aircraft from Colorado to
22 California on December 13, 2003. The Los Angeles County Assessor became aware that the aircraft
23 was located in California in February 2004, and the Sales and Use Tax Department (Department)
24 received that information from the assessor, through an information sharing agreement, on September
25 21, 2006. The Department sent petitioners a Combined State and Local Consumer Use Tax Return for
26 Aircraft advising petitioners to either pay the use tax on the purchase price of the aircraft or provide
27 documentation to show the purchase was exempt from tax. Petitioners filed the return, showing zero
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1 tax due, but did not provide evidence to support any exemption. Thus, the Department issued the
2 Notice of Determination at issue on August 16, 2007.

3 At the appeals conference, petitioners conceded the purchase of the aircraft was subject to use
4 tax, and they submitted a request for relief of interest due to unreasonable delay. Petitioners assert
5 that, although the determination was issued timely, there was an unreasonable delay based on the
6 amount of time the Department took to discover that petitioners had brought the aircraft into California
7 and to issue the determination (over three years), the time the matter was under consideration by the
8 Settlement Division, and the length of time for an appeals conference to be scheduled (about three
9 years).

10 Interest may be relieved where a person's failure to pay tax is due in whole or in part to an
11 unreasonable error or delay by a Board employee. (Rev. & Tax. Code, § 6593.5, subd. (a)(1).)
12 However, relief is not warranted where any significant aspect of the error or delay is attributable to an
13 act of, or a failure to act by, the taxpayer. Petitioners have not identified any specific delays by the
14 Department in issuing the determination. We find that the Department first became aware of the
15 aircraft's presence in California in September 2006 and, during the next 12 months (approximately), it
16 sent a return to petitioners, received a return showing zero tax due, and corresponded with petitioners
17 regarding the nature of any claimed exemption. We find the Department acted promptly in its
18 communication with petitioners during this period, and that there was no unreasonable delay by the
19 Department in issuing the determination. For the period after the determination was issued through
20 October 2, 2008, we find that there were no unreasonable delays on the part of either the Department's
21 Petitions Section, which was reviewing the petition for redetermination, or the Settlement Division,
22 which was reviewing the offer of settlement made November 7, 2007. We find that the time in review
23 was well within the typical time frames for each of those groups. With respect to the time after
24 petitioner's settlement offer was rejected on October 2, 2008, until the date of the appeals conference,
25 September 29, 2011, there were delays related to staffing shortages which we would not generally
26 regard as unreasonable delays "by an employee of the board" within the meaning of section 6593.5.
27 Furthermore, here, at the appeals conference, petitioners indicated that, at about the time their
28 settlement offer was rejected in 2008, they reached the conclusion that they did owe tax on the

1 \$94,900.00 purchase price of the aircraft. Since petitioners concede that they owe the asserted tax, and
2 concede they recognized they owed that tax before this final period of alleged delay occurred, we find
3 that a significant aspect of the failure to pay the tax after that time is attributable to a failure to act by
4 petitioners, that is, to pay the tax they concede was due. Thus, we find that there were no unreasonable
5 delays in this matter warranting relief of interest under section 6593.5.

6 **OTHER MATTERS**

7 None.

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

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