

## 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: ) Account Number: SB UT 53-004669  
 5 RUSSELL GUERARD WEST ) Case ID 489130  
 6 Petitioner ) Oxnard, Ventura County

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 8 Type of Liability: Responsible person liability

9 Date of purchase of vessel: 04/03/01

10 <u>Item</u>	<u>Disputed Amount</u>
11 Responsible person liability	\$249,279
12 Tax as determined and protested	\$197,463.21
Interest through 02/29/12	181,568.47
13 Finality penalty	19,833.90
Amnesty interest penalty	<u>31,982.14</u>
14 Total tax, interest, and penalty	<u>\$430,847.72</u>
15 Monthly interest beginning 03/01/12	<u>\$ 1,151.87</u>

## 16 UNRESOLVED ISSUES

17 **Issue 1:** Whether the purchase of a vessel by Maranello Investments, LLC, was subject to use  
 18 tax. We conclude that it was.

19 Maranello Investments, LLC (Maranello) (SB P UT 84-044841) purchased a vessel from South  
 20 Florida Yachts on April 3, 2001. South Florida Yachts is not a retailer of vessels in California, and the  
 21 Sales and Use Tax Department (Department) found that Maranello had not paid use tax in connection  
 22 with the purchase of the vessel. The Department issued a Notice of Determination against Maranello  
 23 for the tax due, which it later increased to reflect the actual purchase price of the vessel of \$2,833,420.  
 24 Maranello filed a timely petition for redetermination contending that the transaction was exempt from  
 25 tax because the vessel was purchased to transport persons for hire in interstate and foreign commerce.  
 26 After an oral hearing on October 4, 2007, the Board found that the purchase of the vessel was subject  
 27 to use tax. As more fully explained under Issue 2, Maranello did not pay the liability, and the  
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1 Department issued a Notice of Determination against petitioner as an individual for Maranello's  
2 unpaid tax-related liabilities.

3 Petitioner contends that Maranello's vessel purchase was not subject to use tax because  
4 Maranello purchased the vessel under a vehicle dealer's license issued by the California Department of  
5 Motor Vehicles, the vessel was thereafter used exclusively in business charter activities, and the vessel  
6 would at some later time be sold under the same dealer license.

7 In order to prevail, petitioner must prove that the vessel was purchased for resale, and  
8 Maranello's only use of the vessel consisted of leasing or, in the alternative, holding the vessel for  
9 resale. We first note that the vehicle dealer license is relevant only for the purchase and sale of  
10 vehicles, not transactions involving vessels. Also, in Maranello's appeal, it argued that the use of the  
11 vessel consisted of charters, not leases. We find that the use of the vessel for charters is not consistent  
12 with holding the vessel for resale and using it only for demonstration or display. Petitioner has  
13 provided no persuasive evidence that the Maranello leased the vessel or merely held the vessel for  
14 resale, or that it subsequently sold the vessel. Accordingly, we find that Maranello's purchase of the  
15 vessel was subject to use tax.

16 **Issue 2:** Whether petitioner is personally liable as a responsible person pursuant to Revenue  
17 and Taxation Code section 6829 for Maranello's unpaid liabilities related to the vessel purchase. We  
18 conclude petitioner is personally liable.

19 Maranello was an operator of boat charter services. The Department issued seller's permit SR  
20 AC 97-728537 to Maranello with a start date of July 7, 2000, and closed the seller's permit on  
21 November 16, 2007, with an effective close-out date of December 31, 2005. At the time Maranello  
22 ceased business operations, the majority of its liability related to the vessel purchase remained unpaid.

23 The Department determined that petitioner was a person responsible for Maranello's sales and  
24 use tax compliance. This is one of the requisite elements of responsible personal liability, and it is not  
25 disputed. The second requisite element is that the LLC consumed tangible personal property in this  
26 state and failed to pay tax. For the reasons explained under Issue 1, we find that this element has been  
27 satisfied. The other two conditions, which petitioner does dispute, are that Maranello must have  
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1 terminated its business activities, and petitioner must have willfully failed to pay or to cause to be paid  
2 taxes due from Maranello.

3         The Department concluded that Maranello had terminated its charter business because it did not  
4 file any sales and use tax returns reflecting business activity after December 31, 2005, and because of  
5 statements made by Mr. Dennis Sarna, CPA, indicating that Maranello had discontinued its charter  
6 business. Petitioner contends that Maranello continues in existence, and that it has temporarily  
7 suspended its charter activities upon orders from the Los Angeles Superior Court in connection with  
8 petitioner's divorce litigation. As support, petitioner refers to Maranello's 2006 federal income tax  
9 return, and he has provided a copy of a certificate from the State of Delaware, Division of  
10 Corporations, printed on April 28, 2011, which shows that as of May 19, 2010, Maranello had a status  
11 of "Good Standing."

12         Based on the language of section 6829, we must look to whether the business activity of the  
13 LLC has been terminated, and it is irrelevant whether the LLC as an entity still exists. We find that the  
14 lack of reported gross sales after the fourth quarter 2005 shows that the business activities effectively  
15 ceased by the end of 2005. Hence, we find that Maranello has ceased its business operations, and that  
16 requisite element of responsible person liability has been met.

17         With respect to willfulness, this means that the failure must have been the result of an  
18 intentional, conscious, and voluntary course of action by the responsible person (even if without a bad  
19 purpose or evil motive). A person is regarded as having willfully failed to pay taxes, or to cause them  
20 to be paid, where he or she had knowledge that the taxes were not being paid and had the authority and  
21 ability to pay taxes or to cause them to be paid, but failed to do so.

22         Although there is evidence that petitioner was not aware that the use tax was due on April 30,  
23 2002, because correspondence from the Board was returned as undeliverable, petitioner has  
24 acknowledged that he knew of Maranello's use tax liability at the time Maranello filed its petition for  
25 redetermination in April 2003. Further, the Notice of Redetermination was issued to Maranello on  
26 November 18, 2007. Consequently, we find that petitioner had actual knowledge of the use tax  
27 liability no later than November 18, 2007.

1 As noted previously, petitioner has conceded that he was responsible for managing Maranello's  
2 fiscal affairs, and we thus find he had authority to pay the taxes or to cause them to be paid. Regarding  
3 whether Maranello had sufficient funds to pay the taxes due, petitioner has acknowledged that  
4 Maranello was paying general operating expenses from April 2003 to January 2007, and he continues  
5 to authorize the payment of creditors such as the insurance provider and Maranello's agent for service  
6 of process. Also, there is evidence that Maranello made payments of more than \$400,000 for parts,  
7 repairs, and fuel from October 11, 2001, through April 21, 2003. Thus, we conclude that Maranello  
8 had funds available to pay the use tax liability but chose to pay other creditors instead. We therefore  
9 find that petitioner's failure to pay the use tax liability was willful and that all four requisite elements  
10 of responsible person liability have been met.

#### 11 **OTHER DEVELOPMENTS**

12 Since Maranello did not timely pay the Notice of Determination issued against it or file a  
13 timely petition for redetermination, a finality penalty of \$19,833.90 was imposed, and since it did not  
14 participate in the amnesty program, an amnesty interest penalty of \$31,982.14 was added to the  
15 determination when it became final. Although we explained to petitioner that he could file a request  
16 for relief of either or both these penalties, he has not done so. Thus, we have no basis to consider  
17 recommending relief of these penalties.

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