

**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: )  
JOHN D. WRIGHT ) Account Number: SB G UT 84-099908  
Petitioner ) Case ID 445514  
Scottsdale, AZ

Type of Transaction: Purchase of a vessel

Purchase Date: November 1, 2004

<u>Item</u>	<u>Disputed Amount</u>
Purchase of a vessel	\$450,000
Tax as determined	\$33,908.00
Adjustment - Sales and Use Tax Department	+ 967.00
Proposed redetermination, protested	<u>\$34,875.00</u>
Proposed tax redetermination	\$34,875.00
Interest through 3/31/11	<u>17,117.94</u>
Total tax and interest	<u>\$51,992.94</u>
Monthly interest beginning 4/1/11	<u>\$203.44</u>

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner's purchase and use of the vessel is excluded from use tax. We conclude that it is not.

The available documentation indicates that, after negotiations, petitioner made a counter offer to purchase the subject vessel with contingencies for a sea trial and survey, which was accepted by the seller on September 30, 2004, and that the contingencies were satisfied by October 27, 2004.

Petitioner accepted offshore delivery of the vessel on November 1, 2004, brought the vessel to San Diego that same day, departed for Mexico on January 12, 2005, returned to San Diego on April 29, 2005 (107 days after leaving California), and filed a return with the Board claiming that no tax was applicable because the vessel was not purchased for use in California.

1           The Sales and Use Tax Department (Department) noted that paragraph eight of the purchase  
2 agreement (the accepted counter offer) required petitioner to provide written acceptance to avoid  
3 automatic cancellation of the contract. It concluded that the contract could not have become binding  
4 prior to the date of written acceptance, and that such acceptance occurred on October 27, 2004, when  
5 both petitioner and the seller signed the “Final Approvals” section of the purchase agreement.  
6 Consequently, the Department found that the applicable test period for determining whether the vessel  
7 was purchased for use outside California was 12 months, as provided by Revenue and Taxation Code  
8 section 6248, as amended for periods beginning October 2, 2004. The Department determined that the  
9 applicable 12-month test period was November 1, 2004, through October 31, 2005, and that the vessel  
10 was physically located in this state for 258 days (365 – 107) during that time. Therefore, the  
11 Department concludes petitioner has not provided sufficient evidence to rebut the presumption that the  
12 vessel was purchased for use in California.

13           Petitioner contends that the purchase agreement became binding on September 30, 2004, upon  
14 the seller’s acceptance of the counter offer. Therefore, petitioner argues that the six-month test  
15 provided in California Code of Regulations, title 18, section (Regulation) 1620, subdivision (b)(4) is  
16 applicable. Since the vessel was physically located outside this state for more than one-half of the time  
17 during the six-month test period (107 out of 181 days), petitioner asserts that the presumption of  
18 purchase for use in California has been rebutted. Petitioner contends that paragraph eight of the  
19 purchase agreement relates only to his acceptance of the condition of the vessel, not the establishment  
20 of the underlying purchase contract or when the contract became binding. In support of his contention  
21 that the binding date of the purchase agreement is September 30, 2004, petitioner cites (1) *Storek &*  
22 *Storek, Inc. v. Citicorp Real Estate* (2002) 100 Cal.App.4<sup>th</sup> 44; (2) an opinion letter from the Board’s  
23 Legal Department to petitioner’s attorney dated October 1, 2004, regarding amendments to Revenue  
24 and Taxation Code section 6248; (3) Business Taxes Law Guide (BTLG) annotation 800.0010  
25 (10/4/1990) and the underlying opinion letter on which the annotation is based; and (4) an article  
26 entitled, “Is Asking for a Post-Survey Repair Allowance Really a Counteroffer,” by David Weil,  
27 former legal counsel to the California Yacht Broker’s Association.

1           Since the vessel was brought into California on the day of purchase, regardless of the date of  
2 that purchase, it is presumed that the vessel was purchased for use in this state. (Cal. Code Regs., tit.  
3 18, § 1620, subds. (b)(4)(A) & (b)(5)(A).) There are two different sets of tests by which to rebut the  
4 presumption, depending on the date of purchase or, if applicable, the date the purchase agreement  
5 became binding. (Rev. & Tax. Code, § 6248, subd. (d).) As relevant here, the critical date is  
6 October 2, 2004. Where the date of purchase or binding purchase agreement was prior to that date, a  
7 purchaser can rebut the presumption if he or she can establish that the vessel was used, stored, or both  
8 used and stored outside of California one-half or more of the time during the six-month period  
9 immediately following its entry into the state. (Reg. 1620, subd. (b)(4)(A).) Where the purchase was  
10 on or after October 2, 2004, and there was no binding purchase agreement prior to that date, it is  
11 rebuttably presumed the vessel was acquired for storage, use, or other consumption in this state if any  
12 of the following occur: (1) the vessel was purchased by a California resident as defined in section 516  
13 of the Vehicle Code; (2) the vessel was subject to property tax in this state during the first 12 months  
14 of ownership; or (3) the vessel was used or stored in this state more than one-half of the time during  
15 the first 12 months of ownership. Here, since the purchase occurred on November 1, 2004, the  
16 determining issue is whether the purchase agreement was a binding purchase contract prior to October  
17 2, 2004.

18           The purchase agreement included a Final Approvals section, and petitioner was not required to  
19 purchase the vessel under the agreement unless and until he signed that section signifying his approval  
20 or waiver of the sea trial and survey. If left unsigned, petitioner would have been deemed to have  
21 rejected the vessel and would have been entitled to recover some portion of his deposit. The parties  
22 effectively agreed that petitioner would be allowed to try out the vessel, conduct a survey, and then  
23 decide whether to complete or terminate the purchase. Petitioner's approval of the sea trial and survey  
24 was subjective, as there were no guidelines in the purchase agreement describing what constituted  
25 satisfactory completion of the sea trial and survey. Petitioner's rejection of the sea trial and survey did  
26 not require a reason and did not require him to take any action, other than withholding his signature  
27 from the Final Approvals section, to terminate the purchase. Accordingly, petitioner had the discretion  
28 to avoid the purchase of the vessel unless and until he signed the Final Approvals section of the

