



1 the vehicle occurred no later than February 7, 2008, when he registered the vehicle in his name, that is  
2 the date used here as the date of purchase.) There is also no dispute that claimant stored the vehicle in  
3 his garage and used it for at least a few short trips within California.

4 DMV records indicate that, at the time of the loan agreement, the vehicle was registered in the  
5 name of Ms. Hernandez only, rather than Ms. Hernandez and Mr. Banuelos. Nevertheless, the loan  
6 agreement signed by Mr. Banuelos stated that he had, or would immediately acquire, full title to the  
7 vehicle, and under that agreement, claimant acquired the vehicle as collateral for the loan. Consistent  
8 with these provisions, after the default by Mr. Banuelos, claimant was able to effect the transfer to  
9 himself of legal title to the vehicle. Claimant indicated that, thereafter, Ms. Hernandez heard that  
10 claimant was contemplating selling the vehicle for more than \$7,500, and she asked claimant if she  
11 could purchase the vehicle for his original purchase price of \$7,500, and claimant agreed.

12 We find that claimant purchased the vehicle from Mr. Banuelos, pursuant to the agreement  
13 between claimant and Mr. Banuelos. That Mr. Banuelos must have obtained the cooperation of  
14 Ms. Hernandez to allow claimant to effect transfer of title by the DMV is simply a condition imposed  
15 on Mr. Banuelos by his agreement with claimant, and does not alter the fact that the agreement was  
16 solely between claimant and Mr. Banuelos. After he acquired the vehicle from Mr. Banuelos, claimant  
17 sold the vehicle to a different person, Ms. Hernandez. Therefore, we conclude that the vehicle was not  
18 returned to the person from whom claimant purchased the vehicle. We note also that claimant  
19 concedes that he made personal use of the vehicle. We conclude that claimant properly paid tax on his  
20 purchase price of the vehicle, and that there was no overpayment by virtue of claimant's sale of the  
21 vehicle to Ms. Hernandez. Accordingly, we recommend that the claim be denied.

#### 22 **OTHER MATTERS**

23 Claimant paid a late payment and return penalty of \$58.00 that is not covered by his claim for  
24 refund. After the first appeals conference, we sent claimant a letter explaining that he could request  
25 relief of the penalty, but that a claim for refund of the penalty would be timely only if filed by April  
26 30, 2011. Claimant did not request relief or file a claim for refund of the amount paid toward the  
27 penalty, and such a claim is now barred.

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