

**CALIFORNIA STATE BOARD OF EQUALIZATION**

**APPEALS DIVISION FINAL ACTION SUMMARY**

In the Matter of the Petition for Redetermination )  
 Under the Sales and Use Tax Law of: )  
 PEDOTTI LIVESTOCK ) Account Number: SA U UT 84-119390  
 ) Case ID 484288  
 )  
 ) Alturas, Modoc County  
 Petitioner )

Nature of Transaction: Purchase of vehicle

Date of Purchase: 3/13/07

Item Disputed Amount

Purchase of vehicle \$28,545

	<u>Tax</u>	<u>Penalty</u>
As determined	\$2,069.00	\$206.90
Adjustment: Appeals Division		<u>-206.90</u>
Proposed redetermination, protested	<u>\$2,069.00</u>	<u>\$0.00</u>
Proposed tax redetermination	\$2,069.00	
Interest through 2/28/11	<u>646.57</u>	
Total tax and interest	<u>\$2,715.57</u>	
Monthly interest beginning 3/1/11	<u>\$12.07</u>	

The Board held a hearing regarding this matter on September 14, 2010, granting petitioners 30 days to submit supporting documents and the Sales and Use Tax Department (Department) 30 days to respond. Petitioner’s submission and the Department’s response are discussed below under Post Hearing Developments.

**UNRESOLVED ISSUE**

**Issue 1:** Whether petitioner purchased the vehicle for use in California. We find that he did.

On March 12, 2007, petitioner contracted with Best Deal Trucks (dealer) of Fontana, California, to purchase the vehicle and completed and signed form BOE-447 (Statement Pursuant to Section 6247 of the California Sales and Use Tax Law), certifying that the vehicle was purchased for use outside California. On the same day, the vehicle was delivered to petitioner in Nevada, as documented by a completed form BOE-448 (Statement of Delivery Outside California), certifying that

1 delivery occurred outside California. On March 27, 2007, the dealer registered the vehicle with the  
2 California Department of Motor Vehicles under petitioner's name. Petitioner then drove the vehicle  
3 empty into California, apparently for repairs. The vehicle stayed in California until petitioner picked  
4 up the vehicle's first load in Williams, California, on April 18, 2007, and delivered this load to Bly,  
5 Oregon. Since the sale and purchase occurred outside California upon the seller's delivery of the  
6 vehicle to petitioner in Nevada, any tax that is due is use tax owed by petitioner.

7 A vehicle purchased outside California that is brought into California is regarded as having  
8 been purchased for use in this state if the first functional use of the vehicle was in California. (Cal.  
9 Code Regs., tit. 18, § 1620, subd. (b)(5)(A).) "Functional use" means use for which the property was  
10 designed. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(3).) In this case, the vehicle is a Peterbilt truck  
11 designed to haul cargo, and the vehicle is thus functionally used when it hauls cargo or when  
12 dispatched to pick up a specific load of cargo (since the use of the vehicle for carrying that cargo is  
13 regarded as having begun when the vehicle is dispatched for that specific purpose).

14 There is no dispute that this vehicle was delivered outside California and that the purchase  
15 occurred out of state. There is also no dispute that shortly thereafter the vehicle returned to California  
16 for repairs and stayed in California until it picked up its first load, in California, on April 18, 2007, for  
17 delivery of the load out of state. Thus, the first functional use of the vehicle occurred when the vehicle  
18 was dispatched to pick up that load in Williams, California. Accordingly, the vehicle was purchased  
19 for use in California, and such use is taxable. Petitioner's other arguments alleging that the vehicle  
20 was first used in interstate commerce and then continuously in interstate commerce are irrelevant  
21 because the first functional use of the vehicle occurred in this state.

#### 22 **RESOLVED ISSUE**

23 Petitioner submitted a statement signed under penalty of perjury requesting relief from the  
24 failure-to-file penalty, asserting that it believed no tax was due because the vehicle was used  
25 exclusively in interstate commerce. The Department accepts this as an adequate explanation, and  
26 based on the Department's concurrence, we recommend this penalty be relieved.

1 **POST HEARING DEVELOPMENTS**

2 At the Board hearing, petitioner contended that the vehicle was first functionally used outside  
3 California, although the vehicle was taken from Nevada to petitioner’s Alturas, California ranch for  
4 repairs on March 13, 2007, and then delivered its first load from Williams, California to Beatty,  
5 Oregon on April 19, 2007. Petitioner asserted that the vehicle’s first haul was a delivery in interstate  
6 commerce because the vehicle was actually dispatched from Nevada on March 13, 2007, to make the  
7 delivery on April 19, 2007, which had been planned approximately six months in advance, and was a  
8 recurring delivery that petitioner had made for several years. The Members asked petitioner to provide  
9 evidence that the April 19, 2007 trip had been planned before the vehicle was taken to petitioner’s  
10 ranch for repairs. Specifically, the Members asked petitioner to provide a statement from the customer  
11 for whom petitioner delivered the load on April 19, 2007 freight bills from prior years showing that  
12 this delivery recurred each year, and vehicle mileage logs.

13 After the hearing, petitioner provided freight bills and mileage logs for 2006 and 2007, along  
14 with a narrative describing his operations, but no statement from its customer or other evidence that the  
15 April 19, 2007 load was arranged in advance for that specific date. In fact, petitioner acknowledged  
16 that, while it regularly delivers a similar load in spring each year, the exact date is contingent on  
17 weather conditions. Further, petitioner apparently did not make this delivery every year because the  
18 records from 2006 do not reflect a haul for the same customer during the spring.

19 We find that the vehicle was available to haul property for petitioner’s business or for other  
20 customers between March 13, 2007, and April 19, 2007. Therefore, the evidence does not show that  
21 the vehicle was dispatched from Nevada to California to make the April 19, 2007 haul. Moreover,  
22 based on the available documentation, the Department computes that, during the six-month test period,  
23 only 39.81 percent of the miles traveled by the vehicle were commercial miles in interstate commerce.  
24 Thus, even if the vehicle had been first functionally used outside California, the use of the vehicle  
25 would still be subject to California use tax. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(C)1.)  
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27 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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STATE BOARD OF EQUALIZATION  
SALES AND USE TAX APPEAL