

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:)
 JASON R. PRIDMORE) Account Number: SA UT 84-100101
) Case ID 421508
 Petitioner) Ventura, Ventura County

Type of transaction: Purchase of recreational vehicle

Date of purchase: 03/02/05

<u>Item</u>	<u>Disputed Amount</u>
Purchase price of RV	\$330,901
Tax, as determined:	\$23,412.00
Adjustment - Sales and Use Tax Department	<u>+579.00</u>
Proposed redetermination, protested	<u>\$23,991.00</u>
Proposed tax redetermination	\$23,991.00
Interest through 11/30/10	<u>11,695.73</u>
Total tax and interest	<u>\$35,686.73</u>
Monthly interest beginning 12/1/10	<u>\$139.95</u>

The Board hearing in this matter was held on June 18, 2010. The Board allowed petitioner 30 days to provide additional evidence showing that he did not purchase the RV for use in California, and the Sales and Use Tax Department (Department) 30 days to respond. The discussion under “Unresolved Issue” repeats the discussion stated in the original Board Hearing Summary. The discussion under “Post Hearing Developments” discusses petitioner’s post-hearing submission.

UNRESOLVED ISSUE

Issue: Whether petitioner purchased a recreational vehicle (RV) for use in this state. We conclude that petitioner did purchase the RV for use in this state, and that he owes use tax on that use.

Petitioner purchased an RV from a California dealer, who delivered the RV to petitioner in Arizona on March 2, 2005, as documented by a BOE-448 form that petitioner signed. Petitioner also signed a BOE-447 form indicating that the RV was purchased for use outside of California. When the Sales and Use Tax Department (Department) received the two forms from the dealer, the Department

1 requested documentation from petitioner showing that the RV had not been purchased for use in this
2 state. The Department did not receive a response, and it determined from a search of public records
3 that petitioner was a California resident. The Department also learned that the RV had been registered
4 in California at the time of purchase (the dealer registered the RV with the California Department of
5 Motor Vehicles under petitioner's name and signature on March 2, 2005, and there is no indication that
6 use tax was paid at that time). As a result of these findings, the Department concluded the RV was
7 acquired for storage, use, or other consumption in California, and that the purchase was subject to use
8 tax. The Department issued a Notice of Determination for tax of \$23,412 based on a purchase price of
9 \$322,921. After the determination was issued, the Department found that the actual purchase price
10 was \$330,901, and it mailed a notice of increase in the determination to petitioner.

11 Petitioner contends that his use of the RV is not subject to use tax because he purchased it for
12 use outside California, and that its only entry into this state during the 12-month test period was for
13 warranty repair work that lasted less than 30 days. According to petitioner, he is a professional
14 motorcycle racer, and he purchased the RV for use on the East Coast where 80 percent of his races
15 occur. Petitioner states that he never intended to bring the RV back to California because there are
16 only three races in California during the racing season, and, since he resides in California, he can travel
17 to those races by automobile. Petitioner asserts the following chronology. At the time he purchased
18 the RV, he was under contract with the Jordan Motorsports team based in Mukwonago, Wisconsin.
19 Following delivery of the RV on March 2, 2005, petitioner drove it to Florida for the first of the races
20 scheduled for the 2005 season. The RV was then stored in Gulfport, Mississippi from March 15, 2005,
21 through April 18, 2005. Then, petitioner was hospitalized from an April 24, 2005 accident and flew
22 home to California to recover, leaving the RV in Birmingham, Alabama. As a result of his injuries,
23 petitioner was unable to participate in the California races held for the 2005 season. The RV was
24 subsequently relocated to the Jordan Motorsports headquarters in Wisconsin and remained there from
25 June 6, 2005, through July 17, 2005. On July 17, 2005, the RV was driven to Ohio for a race, then to
26 Virginia, and then to Atlanta. At the conclusion of the race season on September 4, 2005, petitioner
27 returned the RV to Mississippi, where it was stored until the second week of March 2006, when
28 petitioner began the 2006 racing season.

1 At the time of petitioner’s purchase, the law and regulations established a 12-month test for
2 determining whether an RV had been purchased for use in California. If a vehicle was purchased and
3 first functionally used outside of California and was brought into California within 12 months from the
4 date of purchase, it is rebuttably presumed that the vehicle was acquired for storage, use, or other
5 consumption in California, and is subject to use tax, if the vehicle was subject to registration during the
6 first 12 months of ownership *or* if the vehicle was purchased by a California resident. (Rev. & Tax.
7 Code § 6248, subd. (a).) Here, it is undisputed that the RV was purchased and first functionally used
8 outside of California. It is also undisputed that petitioner was a California resident at the time of
9 purchase, that the RV was registered in California by the dealer, and, two months after purchase,
10 petitioner brought the RV into California for warranty work. Thus, it is presumed that the RV was
11 purchased for use in this state because it entered California within 12 months of purchase, was
12 registered in California during the first 12 months of ownership, and was purchased by a California
13 resident.

14 Regarding petitioner’s assertion that the entry into California for warranty work should not be
15 “counted,” petitioner relies on subdivision (f) of section 6248, which provides that the presumption of
16 taxability may be controverted by documentary evidence that the vehicle was brought into this state for
17 the exclusive purpose of warranty or repair service and remained in California for that purpose for a
18 period of 30 days or less. However, subdivision (f) did not become operative until September 20,
19 2006, and it is not applicable to petitioner’s repair service, which occurred in May 2005. Petitioner has
20 provided limited documentation regarding the RV’s use outside California during the 12-month test
21 period. The documentation, which is described more fully in the D&R, may establish dates when
22 petitioner was racing, but it does not establish that petitioner was using the RV on those dates or that
23 he intended to use the RV solely outside this state during the first 12 months of ownership, particularly
24 in light of petitioner’s California residence. Further, we note that petitioner was scheduled to
25 participate in three California races during the 2005 season, and we are not convinced that he did not
26 intend to use the RV in California at those races.

27 Petitioner asserts that he originally intended to use the RV during his races on the East Coast,
28 but he was forced to bring the RV back to California for repair work. However, in order to document

1 that his intent changed after the purchase, petitioner must show that, at the time of purchase, he did not
2 contemplate bringing the RV to California for use, and that the subsequent change of intent was
3 beyond his control. However, at the time petitioner purchased the RV, he owned a residence in
4 California, held a California driver's license, registered the RV in California, and owned and operated
5 a business in California. From these facts, we infer that petitioner was likely to continue to have a
6 presence in this state and that the RV could have been used in California. Also, while we find that the
7 service requirements of the RV were beyond petitioner's control, the choice of entering California was
8 not. Petitioner could have arranged for the warranty work to be performed outside of California.
9 Therefore, we find petitioner has failed to meet either element necessary to show that his intent
10 regarding use of the RV changed after the purchase.

11 Although petitioner did not raise the issue, we also have considered whether petitioner used the
12 RV to travel sufficient commercial miles in interstate commerce to satisfy the alternative test to show
13 that the RV was not purchased for use in California. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(C).)
14 The Department found that the available evidence, including the odometer readings on the purchase
15 contract and the service invoices, supported a conclusion that about 21 percent of the mileage traveled
16 during the six-month test period represented commercial miles traveled in interstate commerce. The
17 Department asked petitioner to submit specific types of additional documentary evidence. We also
18 wrote petitioner, enclosing the Department's analysis, and requested additional documentation.
19 Although petitioner's representative requested an extension of time to present evidence, nothing has
20 been provided. Accordingly, our conclusion remains that the RV was purchased for use in this state,
21 and that use tax applies.

22 **POST HEARING DEVELOPMENTS**

23 At the end of the Board hearing, the Appeals Division hearing representative explained to
24 petitioner the nature of the evidence he needed to submit to support his position, and specifically
25 recommended that he compile his own schedule of mileage showing interstate use and intrastate use.
26 Although petitioner submitted several written arguments, a declaration signed under penalty of perjury,
27 several credit card statements, and five cancelled checks from an unidentified bank account, he did not
28 submit a schedule of mileage for use of the RV as we had suggested. Petitioner repeated his arguments

1 made at the Board hearing regarding the circumstances of how the RV first returned to California. The
2 Department responded that it continued to believe that tax applies, and included evidence in support.

3 We have reviewed both submissions and concluded that petitioner has not established that, at
4 the time of purchase, he did not intend to use the RV in California and that the use of the RV in this
5 state was wholly the result of changed circumstances beyond his control. Additionally, although
6 petitioner did not avail himself of our suggestion that he provide a mileage chart, the Department had
7 already made a good faith attempt to create a mileage chart for the RV before the Board hearing, and
8 then revised that chart after the Board hearing to increase the qualifying usage. However, the end
9 result is commercial miles traveled in interstate commerce of 28.81 percent during the test period,
10 which of course is well below the at least 50 percent required to satisfy the applicable test. (Cal. Code
11 Regs., tit. 18, § 1620, subd. (b)(5)(C).) Petitioner has not provided any chart or other basis for
12 concluding that the Department's chart is not relatively accurate. We find that petitioner has not
13 overcome the presumption that he purchased the RV for use in California, and we thus recommend that
14 the petition be denied.

15
16 Summary prepared by Rey Obligacion, Retired Annuitant
17
18
19
20
21
22
23
24
25
26
27
28