

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Claim for Refund and)
 4 Petition for Redetermination)
 Under the Sales and Use Tax Law of:)
 5) Account Number SR CH 21-849332
 6 RALPH LOUIS TOCCI, dba Tocci Yachts) Case ID's 460529, 468214
 7 Petitioner/Claimant) Pittsburg, Contra Costa County

8 Type of Business: Yacht broker
 9 Audit and Claim period: 07/01/04 – 06/30/07¹

<u>Item</u>	<u>Disputed Amount</u>		
Selling price of boats on which use tax was collected	\$ 95,542		
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>
	<u>07/01/04 – 12/31/04</u>		<u>01/01/05 – 06/30/07</u>
As determined	\$18,007.50	\$1,800.75	\$39,619.38
Post-D&R adjustment	- 12,195.00	- 1,219.50	<u>- 16,431.88</u>
Post-Board hearing adjustment	<u>- 5,812.50</u>	<u>- 581.25</u>	
Adjusted determination	<u>\$ 00.00</u>	<u>\$ 00.00</u>	
Proposed redetermination, protested			\$23,187.50
Payments by Mr. Kelly			<u>- 15,856.00</u>
Protested			<u>\$ 7,331.50</u>
Proposed tax redetermination			\$23,187.50
Interest			<u>7,784.04</u>
Total tax and interest			\$30,971.54
Payments			<u>- 30,971.54</u>
Balance Due			<u>\$ 00.00²</u>

21 The Board held a hearing regarding this matter on June 27, 2012, granting petitioners 30 days
 22 to provide additional records and the Sales and Use Tax Department (Department) 30 days to respond.
 23 Based on petitioner's submissions and the Department's response, we do not recommend adjustments
 24 in addition to those already conceded by the Department at the hearing, as discussed below under Post
 25 Hearing Developments.

26 _____
 27 ¹ Two Notices of Determination were issued to prevent the passage of the statute of limitations.
 28 ² The total amount paid of \$31,692.34 (\$15,836.34 originally paid against the determination for the earlier period and \$15,856.00 paid by Mr. Kelly) exceeds the amount due by \$720.80, and the refund will be made after the Board decides this matter.

UNRESOLVED ISSUE

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2 **Issue:** Whether adjustments are warranted to the audited measure of use tax collected, but not
3 reported, with respect to sales of vessels. We find no further adjustment is warranted.

4 Petitioner is a yacht broker who held a seller's permit from April 1990 through December
5 2009. In the audit, Department found that petitioner had collected use tax that he had not reported to
6 the Board with respect to sales of six documented vessels. After the appeals conference, the
7 Department conceded petitioner had not collected tax with respect to three of those transactions.
8 Accordingly, the measure of tax remaining in dispute at the time of the hearing related to three
9 transactions, a sale to Mr. Swihart of \$78,000, a sale to Mr. Kelly of \$215,000, and a sale to
10 Mr. Harrison of \$90,000. At the Board hearing, the Department conceded that Mr. Swihart had paid
11 the entire amount of tax due and Mr. Kelly had paid \$15,856 of the \$16,662.50 determined with
12 respect to his purchase. Since the sale to Mr. Swihart was the only remaining item in dispute for the
13 earlier period, the liability for July 1, 2004, through December 31, 2004, has been reduced to zero. For
14 that period, taxpayer had not filed a timely petition for redetermination but had filed a timely claim for
15 refund of its February 15, 2008 payment of \$15,836.34. Since the liability for the earlier period has
16 been reduced to zero, and the entire payment of \$15,836.34 has been applied to the later period, the
17 claim for refund of the payment of \$15,836.34 has effectively been granted, with the amount of
18 overpayment applied to the later period. Thus, after the Board hearing, the only amounts remaining in
19 dispute are the amount of tax due on the sale to Mr. Kelly, but not paid by Mr. Kelly to the Board, of
20 \$806.50 (\$16,662.50 - \$15,856), and the tax of \$6,525 determined on the sale to Mr. Harrison.

21 Petitioner contends that, for the two remaining disputed transactions, he was not the broker and
22 instead merely handled the financing. According to petitioner, when a purchaser chose to obtain a loan
23 through petitioner, part of the loan application process required him to complete a security agreement
24 or similar document that included tax, computed at 8.25 percent, as one item of the amount being
25 financed. Petitioner states that the lenders required that he execute the security agreements as the
26 seller, take title from the prior owner at a nominal sum of \$1, and pass title from himself to the
27 purchaser, to conform the chain of title to the requirements set forth in the security agreement. He
28 further states that, when he arranged financing for vessels, all funds went through his trust account, but

1 of down payment collected from the purchasers, as recorded on the loan documents. Therefore, we
2 recommend no further adjustment.

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