

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:)
DAVID TURNER) Account Number SD FH 101-541223
Petitioner) Case ID 553045
Leucadia, San Diego County

Type of Transaction: Imports of wood, furniture, and bedding
Dates of Import: 04/06/04, 09/03/04, and 03/08/07

<u>Item</u>	<u>Disputed Amount</u>
Unreported cost of wood, furniture, and bedding imported	\$25,424
Failure-to-file penalty	\$ 197
Tax as determined and protested	\$1,971.00
Interest through 12/31/13	1,329.63
Failure-to-file penalty	<u>197.10</u>
Total tax, interest, and penalty	<u>\$3,497.73</u>
Monthly interest beginning 01/01/14	<u>\$ 9.86</u>

This matter was scheduled for Board hearing in April 2013, but was postponed at petitioner's request because of a scheduling conflict. It was rescheduled for Board hearing in July 2013, but petitioner did not respond to the Notice of Hearing. Thus, the matter is scheduled for decision on the Consent Calendar. At the request of Member Runner, the matter was pulled from the Consent Calendar and has been scheduled for consideration on the Adjudicatory Calendar

UNRESOLVED ISSUES

Issue 1: Whether the Notice of Determination was timely issued. We find that it was.

The Sales and Use Tax Department (Department) received an import report from the U.S. Customs and Border Protection (U.S. Customs), which indicated that petitioner had imported tangible personal property from Mexico on April 6, 2004, September 3, 2004, and March 8, 2007. The tangible personal property, identified under tariff codes that represented wood articles, furniture, and bedding, had a total declared value of \$25,424. The Department first contacted petitioner in February 26, 2010, and there were various contacts with petitioner. When the Department did not receive evidence to

1 support petitioner's claim that he did not owe the tax, it issued a Notice of Determination (NOD) on
2 September 1, 2010. Petitioner contends that the NOD was not issued timely.

3 Since petitioner did not file a return to report the cost of imported tangible personal property
4 subject to use tax, the statute of limitations for issuing an NOD expired on January 31, 2013, eight
5 years from January 31, 2005. (Rev. & Tax. Code, § 6487, subd. (b).) Thus, the NOD issued in 2010
6 was timely.

7 **Issue 2:** Whether petitioner has established he does not owe use tax with respect to the imports
8 at issue. We find that petitioner has not, and that he is liable for the use tax.

9 As noted previously, the Department received information from U.S. Customs indicating that
10 petitioner imported wood articles, furniture, and bedding. Petitioner argued that he did not import the
11 property into California and requested more detailed information from the Department. The
12 Department explained to petitioner that it did not have the actual broker documents, and that U. S.
13 Customs does not have an obligation to provide those documents to the Department. The Department
14 did provide petitioner with information he could use to contact the broker and U. S. Customs to request
15 the actual broker documents. Since petitioner provided no evidence to contradict the information
16 received from U.S. Customs, the Department issued the NOD in dispute.

17 Petitioner contends that he did not receive or import any wood articles, furniture, or bedding
18 from Mexico, asserting that the use tax liability is based on vague and ambiguous documentation.
19 Petitioner also states that he contacted the broker and U. S. Customs to request the broker documents.
20 Petitioner stated at the appeals conference that the broker did not have the documents because the
21 record retention period (five years) had already passed, and that he had not received a response from
22 U.S. Customs. With respect to the import on March 8, 2007, petitioner stated that the address shown
23 on the import report is a house that he sold in 2006. As evidence, petitioner has provided a copy of a
24 seller's closing statement listing petitioner and his wife as the seller.

25 We find that the NOD is not based on vague and ambiguous documentation, as asserted by
26 petitioner, because it contains correct personal information particular to petitioner. With respect to
27 petitioner's argument that he had sold the house at the address listed on the import report prior to the
28 March 8, 2007 import, we acknowledge that the closing statement provided by petitioner does indicate

1 a sale date for that house of June 29, 2006. However, the U.S. Customs report lists petitioner's name
2 and correct social security number. Since the property was shipped into California, to petitioner, it is
3 presumed that the property was purchased for use in this State, and petitioner bears the burden of
4 proving otherwise. Evidence that petitioner sold the house does not negate the fact that the property
5 was shipped into California. Petitioner has provided no other evidence to show that the U.S. Customs
6 report was in error. Thus, we find petitioner has not provided evidence to rebut the presumption that
7 he imported tangible personal property for use in California and therefore owes use tax.

8 **Issue 3:** Whether relief of the failure-to-file penalty is warranted. We find relief is not
9 warranted.

10 Since petitioner did not file a return to report the cost of imported tangible personal property
11 subject to use tax, a failure-to-file penalty was imposed in the NOD. Petitioner has requested relief of
12 the penalty on the basis that the NOD was not valid. As explained previously, we reject that assertion.
13 Petitioner has not shown that his failure to file a return was due to reasonable cause, and we find that
14 relief of the failure-to-file penalty is not warranted.

15 **OTHER MATTERS**

16 None.

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