

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
SYED A. ALI) Account Number: SB UT 84-095486
) Case ID 400214
)
) San Jose, Santa Clara County
Petitioner)

Nature of Transaction: Purchase of a vessel

Date of Purchase: 7/03/04

<u>Item</u>	<u>Disputed Amount</u>
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Purchase of a vessel	\$1,146,840
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Failure-to-file penalty	\$ 10,035
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	<u>Tax</u>	<u>Penalty</u>
As determined and protested:	<u>\$100,348.50</u>	<u>\$10,034.85</u>
Proposed tax redetermination	\$100,348.50	
Interest through 2/28/09	33,783.98	
Failure-to-file penalty	<u>10,034.85</u>	
Total tax, interest, and penalty	<u>\$144,167.33</u>	
Monthly interest beginning 3/1/09	<u>\$ 668.99</u>	

A Notice of Appeals Conference was mailed to petitioner's address of record, and not returned as undeliverable, but petitioner did not respond to the notice or appear at the appeals conference, which was held as scheduled. Petitioner also did not respond to a post-conference letter offering him an opportunity to provide any additional information or documentation.

This matter was previously scheduled for Board hearing on November 13, 2008. Because petitioner did not respond to the Notice of Hearing, the Board Proceedings Division (BPD) informed petitioner that this matter would be presented to the Board for decision without oral hearing. Prior to the scheduled hearing, petitioner informed BPD that he would like to have an oral hearing.

UNRESOLVED ISSUES

Issue 1: Whether the vessel purchase was subject to sales tax or use tax. We conclude that the purchase was subject to use tax, and petitioner is liable for the tax.

1 The United States Coast Guard notified the Consumer Use Tax Section of the Sales and Use
2 Tax Department (Department) that petitioner, a California resident, had purchased a vessel from a
3 California corporation. The Department found that the seller did not charge sales tax reimbursement
4 on the transaction because the seller was to deliver the vessel to petitioner outside California.
5 Petitioner also executed a “Buyer’s Declaration of Intent to Purchase and Use Vessel outside of
6 California” stating that his first functional use of the vehicle would be outside California, and he would
7 use the vessel outside California for more than one-half of the six months immediately following that
8 first functional use.

9 The undisputed evidence obtained from the seller establishes that the vessel was delivered by
10 the seller’s agent, Captain Kevin Morgan, to petitioner at a point outside California territorial waters
11 on July 3, 2004. Petitioner’s first functional use of the vessel was outside California on the day of
12 delivery, immediately following which petitioner then delivered Captain Morgan back to the dock in
13 California. The Department concluded that the vessel purchase was subject to use tax. In his petition
14 for redetermination, petitioner contended that the vessel was not purchased for use in California but
15 has offered no specific argument in support. In a later telephone conversation with the Department,
16 petitioner asserted that tax is due from the seller because the transaction was subject to sales tax, rather
17 than use tax.

18 We find that the sale occurred outside California when the vessel was delivered to petitioner at
19 a point outside this state, since there is no evidence that title passed prior to delivery. As such, the
20 sales tax cannot apply, and the applicable tax, if any, is use tax owed by petitioner. (Rev. & Tax.
21 Code, §§ 6051, 6201, 6202, subd. (a).)

22 After delivery of the vessel to petitioner outside California, petitioner almost immediately
23 brought the vessel back into California to transport Captain Morgan back home, and petitioner is
24 therefore presumed to have purchased the vessel for use in this state. To rebut that presumption,
25 petitioner must document that the vessel was used, stored, or both used and stored outside of California
26 for one-half or more of the six-month period immediately following the vessel’s entry into California
27 after the delivery to petitioner. However, petitioner has not provided any documentation of his use of
28

1 the vessel. We find that the vessel was purchased for use and used in California, and that petitioner is
2 liable for use tax on that use.

3 **Issue 2:** Whether relief of the failure-to-file penalty is warranted. We find relief is not
4 warranted.

5 In a letter to petitioner, we explained that the failure-to-file penalty may be relieved if a
6 taxpayer shows that his failure to file a return was due to reasonable cause and circumstances beyond
7 his control, and included a form petitioner could use to request relief. Petitioner has not submitted a
8 request for relief, and we find there is no basis upon which to consider recommending relief of the
9 penalty.

10 **OTHER DEVELOPMENTS**

11 None.

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