

**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: )  
JAMES BASS SMITH ) Account Number: SB G UT 84-065978  
 ) Case ID 353126  
 )  
Petitioner ) El Sobrante, Contra Costa County

Type of Transaction	Purchase of a vessel
Date of Purchase:	12/4/03
<u>Item</u>	<u>Measure</u>
Purchase of a vessel	\$160,000
	<u>Tax</u>
As determined	\$13,770.00
Adjustment: Appeals Division	- 170.00
Proposed redetermination, protested	<u>\$13,600.00</u>
Proposed tax redetermination	\$13,600.00
Interest through 8/31/09	<u>6,358.03</u>
Total tax and interest	<u>\$19,958.03</u>
Monthly interest beginning 9/1/09	<u>\$90.67</u>

This matter was scheduled for Board hearing on May 28, 2008, but was placed in the non-appearance calendar because petitioner failed to timely respond to the Notice of Hearing. However, before the matter was presented to the Board for decision, petitioner informed the Board Proceedings Division that he wanted a hearing, which he asked to be postponed because his new representative required additional time to review the case. The matter was removed from the nonappearance calendar and rescheduled for hearing on September 17, 2008, but was again postponed because petitioner filed a Request for Reconsideration for which we concluded a Supplemental D&R was warranted and which was issued on December 16, 2008. The hearing was rescheduled for May 28, 2009, but was postponed for settlement negotiations, which were unsuccessful.

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner has established that his use of the subject vessel qualified for the exemption for commercial deep sea fishing. We conclude that petitioner has not done so.

1           Petitioner purchased the vessel “California Dawn” from California Dawn Partners (seller), a  
2 general partnership, for \$160,000.<sup>1</sup> The sale took place in Newport Beach, California, on December 4,  
3 2003. No tax was paid or reported on the purchase of the vessel. There is no evidence that the seller  
4 held or was required to hold a California seller’s permit by reason of the number, scope, and character  
5 of its sales of vessels, and thus, if any tax is due on this transaction, it is use tax for which petitioner is  
6 liable. (Rev. & Tax. Code, §§ 6201, 6202, subd. (a), 6283, subd. (a).)

7           Petitioner claims that his use of the vessel is exempt from tax because he purchased the vessel  
8 for commercial deep sea fishing. Revenue and Taxation Code section 6368, subdivision (a)(2),  
9 exempts from use tax the use of watercraft purchased for use in commercial deep sea fishing  
10 operations outside the territorial waters of this state by persons who are regularly engaged in  
11 commercial deep sea fishing. The remaining issue here is whether the vessel was used principally in  
12 commercial deep sea fishing operations outside the territorial waters of this state, based on a test period  
13 of 12 consecutive months beginning with the first operational use of the vessel. (Cal. Code. Regs., tit.  
14 18, § 1594, subds. (a)(2), (b)(2).)<sup>2</sup>

15           In support of his claim of exemption, petitioner provided copies of his 2003 and 2004 federal  
16 and California state income tax returns, 106 Department of Fish and Game (DFG) fish tickets dated  
17 between December 13, 2003, and November 20, 2004, commercial fishing licenses, business licenses,  
18 an insurance policy, a captain’s license, and a Certificate of Inspection from the United States Coast  
19 Guard. The Sales and Use Tax Department (Department) also obtained a log report from the DFG.

20           The Department found the documentation provided by petitioner to be unreliable, noting that,  
21 according to DFG, petitioner reported only 15 fishing trips, whereas petitioner provided to the  
22 Department 106 fish tickets, each of which represented one trip. The Department also noted that some  
23 of the 106 fish tickets had block 488 (a fishing area that is inside the territorial waters of California)  
24 and block 456 (a fishing area outside the territorial waters of California) written over each other,  
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26 <sup>1</sup> The Sales and Use Tax Department originally assessed tax based on \$162,000 as the purchase price of the vessel at issue,  
27 but stated at the appeals conference that the purchase price should have been \$160,000, as shown on the seller’s statement.

28 <sup>2</sup> The parties agree that the condition for exemption that the vessel be used by a person regularly engaged in commercial  
deep sea fishing was satisfied.

1 making it impossible to tell which number was originally intended. Furthermore, in all cases where the  
2 fish ticket was included in the DFG report and both numbers appeared in the box, the DFG report  
3 shows the fishing operations were originally reported to the DFG as having been conducted in block  
4 488 (in California waters). The DFG report contained entries for two fish tickets that petitioner did not  
5 provide to the Department, and the Department noted other discrepancies, such as multiple tickets  
6 issued for the same date and dates that do not match the day of the week identified. Lastly, petitioner  
7 provided two fish tickets that indicated that the primary activity for the trips had been whale watching  
8 and two fish tickets for trips where no fish were caught.

9         The Department determined that a more accurate way to judge the location of petitioner's use  
10 of the vessel (as compared to relying on the blocks stated in the tickets petitioner provided) was to base  
11 that determination on the primary species caught indicated on each fish ticket. Using this approach,  
12 the Department concluded that 57 of the 106 fish tickets (53.77 percent) indicated that the vessel was  
13 used for fishing within the territorial waters of California. Adding to these 57 trips the two trips  
14 reported to DFG for which no fish tickets were provided, the two non-fishing (whale watching) trips,  
15 and the two trips where no fish were caught, the Department determined that 63 of 108 total trips  
16 (58.33 percent) do not qualify as commercial deep sea fishing trips outside the territorial waters of  
17 California. Accordingly, the Department concluded that petitioner is not entitled to the claimed  
18 exemption.

19         Our D&R concludes that the Department's method of determining petitioner's use of the vessel  
20 during the test period is valid, and that the evidence indicates the majority of petitioner's trips took  
21 place within California waters. Since petitioner did not provide evidence showing this determination  
22 was in error, we concluded that he did not carry his burden of establishing his right to the exemption.  
23 In his RFR, petitioner argues that we did not give due consideration to the fishing activity records that  
24 he was required to file with DFG. Petitioner argues that 74 of 106 fish tickets, 69.81 percent,  
25 document qualifying use outside the territorial waters of California. Petitioner also argues that, even if  
26 we remove the fish tickets that are ambiguous or have errors, 57 of the remaining fish tickets which  
27 represent 53.77 percent of the usage of the vessel occurred outside the territorial waters of California.

1 We continue to find that these 106 tickets do not represent all use of the vessel during the test  
2 period, and further that these tickets are not reliable evidence of the location of petitioner's use of the  
3 vessel. We find petitioner's explanation for tickets which are marked Block 488 and Block 456  
4 unconvincing. Petitioner's contends that where Block 488 (within the territorial waters of California)  
5 was overwritten with Block 456 (outside the territorial waters of California), "488" was a carbon bleed  
6 through and that "456" was the actual block where the fish was caught. However, petitioner's report to  
7 DFG indicated that some of these trips where the fish tickets appear to be altered occurred primarily  
8 within Block 488. Since DFG receives the original fish tickets, those original tickets presumably  
9 showed Block 488, not Block 456.

10 Petitioner's argument that we should ignore the ambiguous or inaccurate fish tickets and look  
11 only at the 57 fish tickets which he claims contain no errors or ambiguities is not a satisfactory  
12 solution. Petitioner has not provided us with accurate information from which to determine the use of  
13 the vessel, and has not accounted for several fish tickets. For example, we do not know how many  
14 times the vessel was used for whale watching excursion, nor do we know the total use of the vessel  
15 (except that it includes nine days of personal use not accounted for by fish tickets). We find that the  
16 Department's method of determining use of the commercial fishing based on fish habitat is a more  
17 reliable indicator of where the vessel was used than the method petitioner proposes. .

18 As with any claimed exemption, the burden is on petitioner to prove his use of the vessel  
19 qualified for exemption. Petitioner has not carried that burden, and we thus conclude that the  
20 exemption does not apply and that use tax is due on petitioner's purchase price of the vessel.

21 **OTHER DEVELOPMENTS**

22 None.

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24 Summary prepared by Rey Obligacion, Business Taxes Specialist III  
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