STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

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:	)	
JOHN F. STEELE and GAYLE JEANINE STEELE	)	Account Number: SA UT 84-070204 Case ID 333230
Petitioners	)	Shingle Springs, El Dorado County

Nature of Transaction: Purchase of a motorhome

Date of Purchase: 9/21/03

Item	Disputed Amount
Purchase price	$ 225,000
Relief of interest	$ 4,988

	Tax
As determined	$16,314.00
Credit for tax paid to South Dakota	- 5,471.40
Proposed redetermination	$10,842.60
Proposed tax redetermination	$10,842.60
Interest through 1/31/09	4,987.62
Total tax and interest	$15,830.22
Monthly interest beginning 2/1/09	$72.28

Petitioners and their representative did not attend the appeals conference even though a Notice of Conference was mailed to their addresses of record and was not returned as undeliverable. Following the conference, we sent a letter to petitioners and their representative giving them an opportunity to provide additional information but they did not respond.

UNRESOLVED ISSUES

Issue 1: Whether the purchase and use of the motorhome by petitioners is subject to California use tax. We conclude petitioners' purchase and use of the motorhome is subject to use tax.

The California Highway Patrol and the Department of Motor Vehicles provided reports to the Sales and Use Tax Department's Consumer Use Tax Section (Department) indicating that petitioners may have purchased a motor home for use in California because petitioners have an address in Shingle Springs California, were registered to vote in El Dorado County, and possessed unexpired California

drivers' licenses. Included with the reports were replies by petitioner John Steele that he was not a California resident, had been a South Dakota resident since 1995, and maintained residences in several out-of-state locations. On May 12, 2004, the Department sent a letter to petitioners informing them that their motorhome may be presumed to have been purchased for use in California if it was brought into this state within 90 days of purchase, even if it was purchased and delivered out of state, and that use tax would apply even though Mr. Steele may be a resident of another state. The Department advised petitioners that they could overcome the presumption by presenting evidence satisfactory to the Board that the motorhome was not purchased for use in California, and the Department identified the type of evidence that petitioners might be able to provide to make that showing.

Petitioners responded by letters dated June 2, 2004, and July 15, 2004, claiming that the motorhome was delivered to petitioners in Salem, Oregon where it had been first used, had been purchased for "use in interstate and international business and recreational travel in [petitioners'] retirement years," and was registered in South Dakota with vehicle registration fees paid to that state. Petitioners asserted that they had intended to drive the motorhome for a two-month trip to inspect real properties they own in Nevada, Colorado, and South Dakota, but that the plan was cut short because they had to repair a leaking water heater for one of their California rental units. Petitioners further assert that, thereafter, while traveling in Wyoming, they had to return to Sacramento, California for petitioner Gayle Steele's urgent medical treatment, and that her health problems required them to make recurring trips to Sacramento for additional treatments.

To support the contention that the motorhome was used for commercial purposes, Mr. Steele described a November 2003 event when he had to travel to Las Vegas, Nevada, to inspect and repair a rental property damaged by fire. He concluded his letter by claiming that he had satisfied the interstate and foreign commerce exemption and the fees and taxes due were paid to South Dakota. With these letters, petitioners provided a copy of a South Dakota Vehicle Registration, which indicates that $5,782.40 in vehicle registration fees, including $5,471.40 in excise tax, was paid to South Dakota for the motorhome on October 10, 2003. In addition, petitioners submitted various other documents, including property tax bills issued to them by South Dakota's Lyman County for 2001 and 2003, a copy of Mr. Steele's South Dakota driver's license, and a copy of a South Dakota automobile

insurance identification card for the period December 19, 2003, through December 19, 2004. Also, petitioners provided a summary of trips dated September 18, 2003, to June 6, 2004, a trip log dated September 19, 2003, to July 11, 2004, and various purchase receipts and motorhome park receipts dated October 3, 2003, to April 18, 2004.

The documents reflect that petitioners purchased fuel for the motorhome in Corning, California on September 21, 2003, meaning that the motorhome was brought into California within 90 days of purchase. Based on its examination of the documents petitioners provided, for the six-month test period under California Code of Regulations, title 18, section (Regulation) 1620, subdivision (b)(4), which commenced when the motorhome entered California on September 21, 2003, the Department found that petitioners traveled 9,386 miles. The documentation did not establish that the motorhome was outside California for one-half or more of the time during the six-month test period. The Department also found that petitioners did not provide evidence to substantiate *any* of the mileage as having been driven in commercial interstate commerce. Nevertheless, the Department made a good faith attempt, based on petitioners' explanations, to classify the miles traveled for commercial purposes and identified approximately 4,223 out of the 9,386 total miles driven during the six-month test period as miles that *could have been* commercial miles traveled in interstate commerce, which is less than 50 percent of the total miles traveled during the six months following the entry of the motorhome into California. Thus, even giving petitioners all benefit of the doubt in classifying unsubstantiated miles as miles traveled in commercial interstate commerce, the Department concluded that petitioners could not overcome the presumption that they purchased the motorhome for use in California, and thus determined that petitioners' purchase and use of the motorhome was subject to use tax based on an estimated purchase price of $225,000.[1]

There is no dispute that the motorhome was first functionally used outside California, and that it entered California within 90 days from the date of purchase. Therefore, petitioners are presumed to have purchased the motorhome for use in California unless they can satisfy either of the alternative

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[1] The Department obtained the estimated purchase price by calling a Sacramento dealer to obtain the retail price for a 2004 Monaco Windsor motorhome such as the one at issue herein. Petitioners contend that they paid $220,367.86, but have not provided supporting documentation.

STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

tests provided for in Regulation 1620, subdivision (b)(4), for use during the six-month test period, which consisted of 182 days. Based on the documentation provided by petitioners, the motorhome was in California until October 6, 2003, when the motorhome arrived in Las Vegas, Nevada. Thereafter, the motorhome was outside California until it returned to this state no later than November 15, 2003, for a maximum total of 40 days outside California, and it then remained in California though the end of the test period. Thus, during the 182-day test period, the motorhome was outside of California for no more than 40 days, which is about 22 percent of the time. Thus, we find that petitioners failed to overcome the presumption that they purchased the motorhome for use in this state under the test provided by Regulation 1620, subdivision (b)(4)(A).

As for the alternative test of Regulation 1620, subdivision (b)(4)(B), petitioners claim that they used the motorhome for business purposes 80 percent of the time. We note that petitioners do not claim that one-half or more of the *miles* the motorhome traveled during the six-month test period were for business purposes, which is the standard for this test. Furthermore, petitioners did not provide evidence to substantiate that *any* of the mileage was mileage driven in commercial interstate commerce. Nevertheless, the Department made a good faith attempt to classify the miles traveled for commercial purposes based on petitioners' explanations, and identified approximately 4,223 out of the 9,386 total miles driven during the six-month test period as miles that *could have been driven* in interstate commerce. Thus, even assuming all these miles were commercial miles traveled in interstate commerce, they would not be sufficient to overcome the presumption that petitioners purchased the motorhome for use in this state under the alternative test of Regulation 1620, subdivision (b)(4)(B).

Although petitioners have failed to satisfy the tests for overcoming the presumption that they purchased the motorhome for use in this state, petitioners allege that their intent was not to enter California during the first 120 days of ownership of the motorhome. Where purchasers of a vehicle establish that their original intent was to not use property in this state, tax would not apply since use tax applies only on the use of property purchased for use in this state. However, the purchasers in such circumstances have the burden of proving that, at the time of purchase, they did not contemplate bringing the property to California for use in the state. An intention to keep the property outside California long enough to avoid application of the 90-day presumption is not sufficient. Rather, the

STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

necessary intent to avoid tax is that the property would never be used in California. (*Western Contracting Corp. v. State Bd. of Equalization* (1968) 265 Cal.App.2d 568, 575.)

Here, it is undisputed that Mrs. Steele was a California resident at the time the motorhome was purchased. Mrs. Steele's California residency, coupled with the fact that both petitioners were registered to vote in California and possessed unexpired California driver's licenses at or about the time of purchase and that they maintained a residence in California, tends to show that, at the time the motorhome was purchased, petitioners contemplated using it in California. Furthermore, although petitioners indicated that they did not intend to enter California within 120 days of their purchase of the motorhome, they do not deny that they did intend to use the motorhome in this state after that time, and we believe that the facts make it clear that their intent was to use the motorhome inside California. We therefore find that there was no change of intent that supports avoiding the tax due.

With respect to the purchase price of the motor home, petitioners have not provided a copy of the purchase agreement or any other documents related to the purchase to show what the purchase price was. In the absence of documentary evidence of the actual purchase price, we find that the Department's estimate is reasonable. We therefore conclude that petitioners owe use tax measured by $225,000, but that petitioners are entitled to an offsetting credit in the amount of tax paid to South Dakota.

Issue 2: Whether any of the accrued interest should be relieved. We conclude that there is no basis for relieving the interest.

Petitioners have not actually requested relief of interest, but their petition states that they reasonably believed that the information they submitted approximately 15 months earlier in June and July 2004 was sufficient, and that the matter had been closed. It does not appear petitioners made this argument to request relief of interest, but rather in the attempt to have their petition granted. In any event, we note that the only possible basis for relief of interest in this matter would be if there had been an unreasonable error or delay by an employee of the Board acting in his or her official capacity. (Rev. & Tax. Code, § 6593.5, subd. (a).) A person requesting relief of interest must submit a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief. (Rev. & Tax. Code, § 6593.5, subd. (c).) We advised petitioners by letter dated May 12, 2008, that they could

file such a request, but they have not done so. Thus, it appears that petitioners are not seeking relief of interest, and in any event, in the absence of a proper request, we have no basis to consider recommending relief. We note further that the available facts do not indicate that there was an unreasonable delay or error that would warrant relief of any interest.

OTHER DEVELOPMENTS

None.

Summary prepared by David H. Levine, Tax Counsel IV

STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL