

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matter of the Claim for Refund Under )  
the Sales and Use Tax Law of: )  
)  
JAMES WILLIAMS ) Account Number: SA U UT 84-043091  
) Case ID 376621  
)  
Claimant ) Chatsworth, Los Angeles County

Type of Transaction: Purchase of motor home

Date of Purchase: 6/19/01

<u>Item</u>	<u>Amount</u>
Purchase of motor home	\$32,397.37 <sup>1</sup>

**UNRESOLVED ISSUES**

**Issue 1:** Whether claimant has established that his purchase and use of a motor home is not subject to use tax. We find that the tax applies and the claim should be denied.

On June 12, 2001, claimant, a California resident, entered into an agreement to purchase a 2001 American Coach motor home from a dealer in Santa Fe Springs, California. Claimant indicated that he was purchasing the motor home as a gift for his father, James E. Williams (whom claimant alleges is a resident of Illinois), and completed an application for the issuance of a certificate of ownership without registration, pursuant to Vehicle Code section 4452. The certificate was made out in the name of claimant's father. Claimant also executed a *Statement Pursuant to Revenue and Taxation Code Section 6247* (form BOE-447), which is intended to relieve a retailer delivering property outside California to a known California resident of any liability to collect the state's use tax from that purchaser. The BOE-447 claimant completed identifies the purchaser as claimant's father, provides an address for him in Van Nuys, California, and indicates that the motor home was being purchased for use at an out-of-state address in Billings, Montana. Claimant took delivery of the motor home in

<sup>1</sup> Claimant filed timely claims for refund for payments totaling \$32,397.37, comprised of use tax of \$23,042, failure-to-file penalty of \$2,304, finality penalty of \$2,304, and interest of \$4,747.37. On May 21, 2005, claimant also paid an additional \$1,000 towards interest for which he did not file a timely claim for refund and which is not in dispute here.

1 Ehrenberg, Arizona, on June 19, 2001, and signed a notarized *Statement of Delivery Outside California*  
2 (form BOE-448) to corroborate the out-of-state delivery. Accordingly, because the sale occurred  
3 outside California, if any tax applies to this transaction, it will be use tax for which claimant is liable as  
4 the purchaser. (Rev. & Tax. Code, §§ 6051, 6201, 6202, subd. (a).)

5 On March 1, 2002, the Sales and Use Tax Department (Department) mailed a letter to “James  
6 Williams” at 13855 Sylvan, Van Nuys, California 91401, requesting evidence to support claimant’s  
7 assertion that he did not owe use tax with respect to the purchase of the motor home. While it is  
8 undisputed that the letter was addressed to the address of claimant James David Williams and the letter  
9 was not returned as undeliverable, neither claimant nor his father responded. Therefore, the  
10 Department issued a Notice of Determination (NOD) to claimant at the same Van Nuys address on  
11 October 18, 2002. The NOD was not returned as undeliverable.

12 Since claimant failed to pay or petition the NOD within 30 days of its issuance, it became final  
13 on November 18, 2002, and a finality penalty of \$2,304.20 attached. Claimant paid the full amount of  
14 tax, penalties, and interest both involuntarily (a levy issued to Union Bank returned a payment of  
15 \$2,630.06) and voluntarily, and filed these claims.

16 According to claimant, he made a \$29,000 down payment towards the purchase of the motor  
17 home, but he made no other payments under the installment purchase agreement and had to return the  
18 motor home to the dealer in June 2002 because the loan he obtained to purchase the motor home had  
19 been rejected. Claimant asserted that he or his father used the motor home exclusively outside of  
20 California until it was returned to California in June 2002 (about a year after the motor home was  
21 delivered to claimant in Arizona on June 19, 2001). Claimant submitted a calendar log with entries  
22 dated between June 2001 and September 2001, allegedly showing where the motor home was located  
23 during a trip taken across the United States by claimant and his father. He also submitted receipts from  
24 campgrounds in which he asserts the motor home was located during this 90 day trip: Flagstaff,  
25 Arizona (June 19, 2001); Breckenridge, Colorado (June 24, 2001, to July 1, 2001); Marshfield,  
26 Missouri (July 5, 2001, to July 14, 2001); Springfield, Illinois (August 10, 2001, to August 18, 2001);  
27 Casey, Illinois (September 1, 2001, to September 8, 2001); and Chatham, Illinois (September 14, 2001,  
28 to September 16, 2001).

1 Claimant also provided an undated fuel receipt for 66 gallons of diesel fuel purchased in Milan,  
2 New Mexico, reflecting California vehicle license number 4BMC878, which corresponds to a 1998  
3 Fleetwood motorhome registered in California to claimant's father. However, claimant asserts that the  
4 66 gallons of fuel was purchased for the motorhome at issue here, and that the receipt reflects the  
5 license number of the other motor home because he used a gas rewards card that had been set up using  
6 that license number. Claimant also provided a nearly illegible fuel receipt for what appears to be a  
7 \$136 charge for diesel fuel (retailer and date unknown) and a barely legible (undated) diesel fuel  
8 receipt from a Flying J Travel Plaza in Oklahoma City, Oklahoma, for the purchase of 67 gallons of  
9 diesel fuel.

10 Claimant presented an Illinois insurance card with an effective date of June 10, 2001, issued by  
11 GMAC Insurance Company. This card identifies the motor home at issue and lists the insured as James  
12 Williams of 385 Robinson Avenue, Decatur, Illinois. Claimant has not, however, provided any  
13 evidence showing that the motor home was registered in the State of Illinois or in any other state.  
14 Finally, claimant presented his father's credit card statements dated from January 5, 2001, to  
15 December 26, 2001, to show his father's whereabouts in 2001, but which claimant admits do not show  
16 what vehicle his father was driving at the time.

17 The Department accepted all the campground receipts as relating to the motor home at issue,  
18 but did not give claimant credit for any days not specifically set forth in the campground receipts. The  
19 Department asserts that claimant's documents support out-of-state use for only 39 days within the test  
20 period. On appeal, claimant argues that even though the campground receipts total only 39 days, he  
21 should be given credit for the days driven between campsites and that it is illogical to assume that he  
22 would have driven the motor home back to California during the days not listed in the campground  
23 receipts, as the campground receipts show a definite pattern of out-of-state use and correspond to the  
24 timeline of claimant's family trip across the country.

25 As relevant here, for vehicles purchased prior to October 2, 2004, Regulation 1620,  
26 subdivision (b)(4), sets forth a 90-day test and a six-month test for vehicles purchased and first  
27 functionally used outside of California, that later enter California. Under the 90-day test, the purchaser  
28 must establish that the property was first functionally used outside of California and not brought into

1 California within 90 days of the purchase date, excluding time of shipment to California and time of  
2 storage for shipment. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(4).) If the vehicle is brought into  
3 California within 90 days of purchase, a purchaser can still rebut the presumption under section 6246,  
4 that the vehicle was purchased for use in California, if the purchaser satisfies the six-month test by  
5 establishing that the vehicle was used, stored, or both used and stored outside of California one-half or  
6 more of the time during the six-month period immediately following its entry into this state. (Cal.  
7 Code Regs., tit. 18, § 1620, subd. (b)(4)(A).)

8 Here, the 90-day test period began on the date of purchase, June 19, 2001, and ended on  
9 September 17, 2001. We agree with claimant that it would be illogical to conclude that all days not  
10 explicitly covered by the campground receipts, which were accepted by the Department as showing 39  
11 days of out-of-state use at such campgrounds, as days spent in California. Thus, we agree that, if the  
12 Department is correct to accept them as all related to the subject motor home, the receipts should be  
13 regarded as documenting some time more than 39 days of out-of-state use. However, there are gaps of  
14 time between the days covered by the receipts for which claimant has provided no proof of where the  
15 motor home was used. In particular, there is an unexplained gap of 27 days between the July 15, 2001  
16 ending date covered by the Marshfield, Missouri receipt to the August 9, 2001 start date of the next  
17 receipt for Springfield, Illinois. This time period would have allowed more than enough time to drive  
18 the motor home from Missouri to California, and then to drive it back east again to Illinois for the stay  
19 beginning August 10. The fuel receipts claimant provided do not account for the motor home's  
20 location during the 90-day test period since they are undated and do not identify the vehicle as a 2001  
21 motor home. As for the Illinois insurance card, the mere fact that claimant obtained an out-of-state  
22 insurance card does not prove that the motor home did not enter California during the 90-day test  
23 period. Finally, the credit card statements claimant submitted from his father do not specify any gas  
24 purchases or otherwise identify the 2001 motor home and, thus, do not support claimant's assertion  
25 that the motor home did not enter California during the 90-day test period.

26 With regard to the six-month test, at the appeals conference, claimant reiterated his assertion  
27 that the motor home was first brought into California in June 2002 and thereafter was immediately  
28 returned to the dealer in Santa Fe Springs, California. Thus, claimant offered no evidence of the

1 storage or use of the motor home beyond the first 90 days after purchase (specifically, claimant offered  
2 no evidence of the motor home's use after September 2001). We find that claimant has failed to show  
3 that the purchase and use of the motor home is not subject to California use tax.

4 **Issue 2:** Whether relief from the penalties for failure to file a return and failure to timely pay  
5 the determination or petition for redetermination is warranted. We recommend that relief be denied.

6 After the appeals conference, claimant submitted a declaration signed under penalty of perjury,  
7 requesting relief of the penalties on the basis that claimant was not aware of any tax liability because  
8 he believed that the motor home remained out of state for over 90 days. We find that claimant's  
9 declaration merely repeats his unproven assertion that the motor home remained out of state for over  
10 90 days, without providing further evidence as to why his failure to file a return was due to reasonable  
11 cause and circumstances beyond his control and occurred notwithstanding the exercise of ordinary care  
12 and in the absence of willful neglect. Accordingly, we do not recommend relief from the failure-to-file  
13 penalty.

14 With respect to the finality penalty, claimant does not provide any basis for his failure to  
15 respond to the NOD in a timely manner, other than his assertion that he believed he had met the 90-day  
16 test. Even if claimant believed that he had met the 90-day test, this does not explain why he failed to  
17 timely respond to the NOD by either paying or protesting the liability. Furthermore, we note that the  
18 NOD was issued to claimant at the address he provided on his completed form BOE-447, and the NOD  
19 was not returned as undeliverable. Based on these facts, we find that claimant has failed to show  
20 reasonable cause for relief from the finality penalty.

21 **OTHER DEVELOPMENTS**

22 None.

23  
24 Summary prepared by Rey Obligacion, Business Taxes Specialist III  
25  
26  
27  
28