

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petition for Redetermination )  
 4 Under the Sales and Use Tax Law of: )  
 5 Ron Sanchez, dba Essex Performance Boats ) Account Number: SR X EH 99-191467  
 6 ) Case ID 283578  
 7 Petitioner ) Ontario, San Bernardino County

8 Type of Business: Manufacturer and retailer of boats

9 Audit period: 04/01/00 - 03/31/03

10 Item Disputed Amount<sup>1</sup>

11 Disallowed claimed exempt sale \$55,630

	<u>Tax</u>	<u>Penalty</u>
12		
13 As determined:	\$37,661.70	\$3,766.20
14 Adjustment - Sales and Use Tax Department	-10,144.13	-1,014.42
		<u>-2,751.78</u>
15 Proposed redetermination	<u>\$27,517.57</u>	<u>\$0.00</u>
16 Less concurred	<u>-22,928.09</u>	
17 Balance, protested	<u>\$4,589.48</u>	
18 Proposed tax redetermination	\$27,517.57	
19 Interest (tax paid in full 10/8/08)	<u>11,197.63</u>	
20 Total tax and interest	\$38,715.20	
21 Payments – petitioner	-31,599.26	
22 Mr. Prero	<u>-7,115.94</u>	
23 Balance Due	<u>\$0.00</u>	

21 The Board heard this matter on October 3, 2007, but deferred action so that the Sales and Use  
 22 Tax Department (Department) could issue a notice of determination to the purchaser of the vehicle in  
 23 issue. Petitioner is a manufacturer and retailer of boats. The disputed transaction represents a claimed  
 24 exempt sale of a boat to Mr. Tim Prero on May 7, 2002. Mr. Prero provided petitioner a signed BOE  
 25 Form 447 dated May 17, 2002, which stated that the boat was to be delivered to Alaska, and that  
 26 Mr. Prero had purchased the boat for use outside California. He also provided documents showing that

27 \_\_\_\_\_  
 28 <sup>1</sup> As explained below, while we characterize this amount as still technically disputed for purposes of writing this summary, the dispute is moot because payment for this liability was obtained from the purchaser.

1 the boat would be shipped to Anchorage, Alaska by World Class Transportation (World Class). On the  
2 basis of these documents, petitioner prepared a bill of lading showing that the boat had been shipped to  
3 Alaska.

4 During the audit, the Department noted that petitioner serviced the boat on July 13, 2002, just  
5 two months after it was purchased. The Department then contacted World Class and was informed  
6 that it does not provide transportation outside of California, and it did not ship the boat. At the appeals  
7 conference petitioner conceded that the boat probably never left California, but argued that he should  
8 not be held liable for the sales tax because Mr. Prero had intentionally deceived him by providing false  
9 documents regarding the shipping of the boat.

10 There is no evidence that the boat was actually delivered outside California. It is immaterial  
11 that the purchaser gave petitioner a form declaring that he was purchasing the boat for use outside of  
12 the state or that the boat “would be” shipped to Alaska. Tax applies unless petitioner establishes that  
13 the boat was *actually* delivered outside California, which he has not. Accordingly, we conclude that  
14 the disputed sale was not exempt and that sales tax applies. Nevertheless, as instructed by the Board,  
15 the Department issued a Notice of Determination to Mr. Prero on January 17, 2008. Mr. Prero did not  
16 protest the determination, and instead, entered into an installment payment agreement, which he  
17 completed on May, 2009.

18 We continue to conclude that the protested sale is subject to sales tax because petitioner could  
19 not prove that the sales was exempt from tax. We thus recommend that the sales tax applicable to this  
20 sale *not* be removed from the deficiency, and that the determination be redetermined without further  
21 adjustment. Nevertheless, Mr. Prero has paid the tax and interest due with respect to this transaction,  
22 and that payment has been credited against petitioner’s liability (which is now fully paid).

### 23 AMNESTY

24 The 50 percent amnesty interest penalty under Revenue and Taxation Code section 7074,  
25 subdivision (a), is not applicable in this case because petitioner filed an application for amnesty and  
26 entered into a qualifying installment payment plan. Also, since petitioner successfully completed the  
27 installment payment plan as agreed, the negligence penalty has been relieved under Revenue and  
28 Taxation Code section 7072, subdivision (a).

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**OTHER DEVELOPMENTS**

None.

Summary prepared by Rey Obligacion, Business Taxes Specialist III