

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
JEFFREY LLOYD MACY) Account Number SD EH 101-622674
Petitioner) Case ID 556663
Twin Peaks, San Bernardino County

Type of Transaction: Purchase of motorcycle kits

Date of entry into California: 08/23/07

<u>Item</u>	<u>Disputed Amount</u>
Unreported purchase of motorcycle kits	\$5,182
Tax as determined and protested	\$402.00
Interest through 04/30/13	<u>137.47</u>
Total tax and interest	<u>\$539.47</u>
Monthly interest beginning 05/01/13	<u>\$ 2.01</u>

This matter was scheduled for Board hearing in February 2013, but was deferred at the request of the Appeals Division, in order to issue a supplemental D&R.

UNRESOLVED ISSUES

Issue 1: Whether the Notice of Determination was timely issued. We find that it was.

Petitioner purchased motorcycle kits from a seller located in China, with a declared value of \$5,182, which he had imported to him at a California address. The U. S. Customs report indicates that the motorcycle kits entered California on August 23, 2007.

The Sales and Use Tax Department (Department) sent petitioner a consumer use tax return on July 9, 2010, after it was notified of the purchase in a report from the U. S. Customs Department. Since petitioner did not file the return, the Department sent petitioner a Notice of Delinquency on September 8, 2010, and petitioner contacted the Department by telephone on September 14, 2010, asserting that he had purchased motorcycle kits from sellers in China with the intent to resell them, but that he had returned some of the kits to China because they were defective and that he had hired an attorney to recover funds paid for the defective motorcycle kits. On September 23, 2010, petitioner

1 returned the Notice of Delinquency, with handwritten notes stating that the motorcycle kits were
2 useless and that he had returned some of the kits but had not received a refund from the sellers. The
3 Department considered petitioner's September 23, 2010 submission to be a return reporting zero tax
4 due, and it found that the documentation provided by petitioner was not sufficient to support his
5 assertion that no use tax was due. Accordingly, the Department issued a Notice of Determination
6 (NOD) to petitioner on October 28, 2010.

7 Petitioner contends that the NOD was not timely issued because he was a qualifying purchaser,
8 he voluntarily filed a return on September 23, 2010, and the Department did not contact him until after
9 the three-year statute of limitations had already expired.

10 Subdivision (b) of Revenue and Taxation Code section 6487.06 defines a "qualifying
11 purchaser" as a person who voluntarily files an individual use tax return to report a purchase of
12 tangible personal property subject to use tax and who meets four specific conditions. In order to be
13 timely, a NOD mailed to a "qualifying purchaser" must be mailed within three years from the last day
14 of the calendar month follow the quarterly period for which the amount is proposed to be determined.
15 Since the transaction at issue occurred in August 2007, the last day of the month following the
16 quarterly period for which the amount was determined was October 31, 2007. Accordingly, the NOD,
17 which was issued October 28, 2010, would have been timely even if petitioner were a "qualifying
18 purchaser," which we find he is not because he did not file a use tax return, and he does not meet all of
19 the four conditions specified in section 6487.06. Accordingly, we reject petitioner's contention that
20 the NOD was not issued timely.

21 **Issue 2:** Whether petitioner owes use tax on the storage, use, or other consumption of the
22 motorcycle kits imported from China, and, if so, whether the use tax liability was discharged in
23 petitioner's personal bankruptcy. We find that petitioner owes use tax, and the debt was not
24 discharged in bankruptcy.

25 Petitioner concedes that he purchased roughly 10 motorcycle kits (the available information
26 does not specify the number of kits). However, he claims that the sellers defrauded him because they
27 did not deliver all of the products purchased, and the products were cheap, knock-off versions.
28 Further, petitioner contends that he does not owe use tax because, even though he did not hold a

1 seller's permit or business license for the retail sale of motorcycles at the time he purchased the
2 motorcycle kits, he intended to sell them. In that regard, petitioner states that he held the motorcycle
3 kits for sale for approximately three years and then destroyed all but one, which he built and now
4 keeps in storage for sale, rather than personal use. Alternatively, petitioner asserts that he paid federal
5 custom fees, and he believes that the fees he paid include California use tax on the purchase of the
6 motorcycle kits. Further, petitioner claims that any use tax liability was discharged in his personal
7 bankruptcy, which was filed in 2004 and completed in April 2005. Petitioner has provided various
8 documents intended to support his contentions.

9 It is undisputed that petitioner purchased motorcycle kits from a seller in China, which were
10 delivered to him in California. It is presumed that the motorcycle kits were purchased for storage, use,
11 or other consumption in this state, and that use tax applies, unless petitioner provides evidence to rebut
12 that presumption. (Rev. & Tax. Code, §§ 6201, 6241; *Paine v. State Bd. of Equalization* (1982) 137
13 Cal.App.3d at p. 443.) Petitioner asserts that he imported the motorcycle kits into California for the
14 purpose of selling them and made no use of them before destroying all but one of the kits. However,
15 he has provided no evidence that he held the kits for sale in the regular course of business, such as
16 evidence that he was in the business of selling motorcycle kits or evidence that he advertised the kits
17 for sale. Moreover, regardless of whether the motorcycle kits were defective, as petitioner claims, and
18 regardless of whether petitioner he intended to resell the motorcycle kits, his voluntary destruction of
19 all but one of the motorcycle kits was an act incident to the exercise of the right of ownership within
20 the meaning of "use" as defined by section 6009. In other words, regardless of his alleged intent at the
21 time of purchase to resell the kits, petitioner's voluntary destruction of all the kits except one
22 represented a taxable use of those kits. With respect to the one kit that petitioner used to build a
23 motorcycle, petitioner has provided no evidence that he is holding that motorcycle for resale in the
24 regular course of business. Indeed, petitioner states that he still retains this motorcycle. We find that
25 petitioner's retention of the motorcycle built from one of the kits was not for purpose of resale in the
26 regular course of business. Accordingly, we find that petitioner has not met his burden to show that
27 the purchase of any of the motorcycle kits was not subject to use tax. Thus, we conclude that the entire
28 purchase price of \$5,182 is subject to use tax. Further, we reject petitioner's argument that he has

1 already paid the use tax at issue, because he has not provided any receipts, either from the seller in
2 China or from U. S. Customs, showing that he paid California use tax on this purchase. Regarding
3 petitioner's assertion that the use tax liability was discharged in bankruptcy, we note that the
4 bankruptcy petition mentioned by petitioner was resolved in 2005, long before the transaction at issue
5 in August 2007. Thus, the use tax liability is a post-petition debt that could not have been discharged
6 in the bankruptcy resolved in 2005.

7 **OTHER MATTERS**

8 None.

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

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