

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:)
DONALD G. SHERIDAN and) Account Number: SA U UT 084-124315
JUDITH C. SHERIDAN) Case ID 486394
Petitioner) Groveland, Tuolumne County

Type of Transaction: Purchase of motor home

Date of purchase: 02/04/08

<u>Item</u>	<u>Disputed Amount</u>
Purchase price of motor home	\$182,868
Relief of interest	\$ 3,833
Tax determined and protested	\$13,257.00
Interest through 01/31/12	<u>3,833.49</u>
Total tax and interest	<u>\$17,090.49</u>
Monthly interest beginning 02/01/112	<u>\$ 77.33</u>

UNRESOLVED ISSUES

Issue 1: Whether petitioner’s purchase of a motor home is subject to use tax. We find that it is.

Petitioner, a husband and wife who are California residents, purchased a motor home which was delivered to petitioner by the seller’s agent in Arizona on February 4, 2008. Petitioner executed forms BOE-447 and 448, certifying that it was purchasing the motor home for use outside California and confirming delivery of the motor home outside California. Since title passage occurred outside California, if any tax applies to this transaction, it will be use tax for which petitioner is liable. In March 2008, the California Department of Motor Vehicles issued a registration certificate for the motor home listing a California address, and the motor home was brought back to California by the dealer for warranty repairs.

In response to a letter from the Sales and Use Tax Department (Department), petitioner claimed that the motor home had not been purchased for use in California but, due to mechanical problems, the motor home was returned to California where it stayed at the dealership for 128 days between February

1 2008¹ and July 2008. Petitioner further states that it kept the motor home in California between repairs
2 and after a trip to Oregon and Washington in August 2008. The Department found that petitioner
3 failed to establish that the motor home was purchased for use outside California.

4 Petitioner argues that it had intended to use the motor home outside of California in excess of
5 90 days but discovered after purchase that it needed extensive repairs.² Petitioner maintains that the
6 dealer should be liable for the tax because the dealer, not petitioner, brought the motor home back into
7 California instead of taking it to the dealer's repair facility in Arizona. After the appeals conference,
8 petitioner provided a letter from Bruce Rossio, an individual who attests that, based on conversations
9 with petitioner, petitioner did not intend to use the motor home primarily in California. In that letter,
10 Mr. Rossio includes various details intended to support that assertion. Petitioner also provided a copy
11 of the lease agreement dated February 8, 2008, with an RV storage facility in Arizona.

12 As relevant to this appeal, when a vehicle purchased and first functionally used outside
13 California is brought into California within 90 days after the date of purchase, excluding time of
14 shipment or storage for shipment to California, there is a rebuttable presumption that the vehicle was
15 acquired for storage, use, or other consumption in this state, and thus use tax is applicable. This
16 presumption may be rebutted by documentary evidence that the vehicle was used, stored, or both used
17 and stored outside of California one-half or more of the time during the six-month period immediately
18 following its entry into this state. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(4).) The 6-month test
19 period applicable to this case is March 14, 2008, through September 14, 2008 (184 days).

20 It is undisputed that petitioner took delivery of and first functionally used the motor home
21 outside California, that the motor home entered California within 90 days of the purchase, and that the
22 vehicle was in California a total of 144 days between March 14, 2008, and August 5, 2008. Thus we
23
24

25 ¹ Petitioner stated that, according to the dealer, the motor home was transported to California for repairs on or about
26 February 11, 2008. However, the dealer repair invoice is dated March 14, 2008, which is the date the Department used for
entry of the motor home into California.

27 ² Petitioner filed a lawsuit against the dealer and manufacturers of the motor home for breach of warranty, and provided a
28 copy of the complaint filed with the United States District Court October 30, 2008. We note that even if petitioner prevails
and receives full restitution, Civil Code 1793.2 and Regulation 1655 do not relieve petitioner of its liability for the use tax
on the motor home.

