OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of: **JOHN BRUNO AND GIOVANNINA BRUNO**	OTA Case Nos. 18011959, 18011960 CDTFA Case Nos. 998668, 1000606 CDTFA Account No. 84-263273 Date Issued: November 1, 2019

OPINION

Representing the Parties:

For Appellants:	John Bruno and Giovannina Bruno
For Respondent:	Joseph Boniwell, Tax Counsel
For Office of Tax Appeals:	Josh Lambert, Tax Counsel

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, John Bruno and Giovannina Bruno (appellants) appeal a decision issued by respondent California Department of Tax and Fee Administration (CDTFA)[1] denying appellants' claim for refund of $4,899.44, reflecting use tax of $4,875.06 plus interest of $24.38.

Appellants waived their right to an oral hearing and, therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants may be relieved of use tax applicable to their purchase of a vehicle for use in this state based upon erroneous advice received from the California Department of Motor Vehicles (DMV).

[1] Sales and use taxes were formerly administered by the State Board of Equalization (Board). In 2017, functions of the Board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) When referring to acts or events that occurred before July 1, 2017, "CDTFA" shall refer to the Board; and when referring to acts or events that occurred on or after July 1, 2017, "CDTFA" shall refer to CDTFA.

FACTUAL FINDINGS

1. On July 12, 2016, Mr. Bruno and his mother, Giovannina Bruno, purchased a 2017 Audi in Ontario, Canada, for $74,635.00, plus tax of $9,706.55 and a license fee of $20.00, in Canadian dollars. On the same date, appellants registered the vehicle in Ontario, Canada.
2. On August 19, 2016, the vehicle entered California.
3. In September 2016, the DMV issued a temporary registration for the vehicle but did not collect use tax.
4. Appellants assert that in September 2016, the DMV in Los Gatos, California, advised Mr. Bruno that use tax was not due in connection with the purchase of the vehicle.
5. On February 14, 2017, CDTFA issued a Notice of Determination (NOD) to appellants for tax of $4,875.06, plus applicable interest.
6. Appellants filed a timely petition for redetermination, asserting that Mr. Bruno had been told by the DMV that no use tax was due. Appellants paid the amount due under the NOD, including tax of $4,875.06, plus interest of $24.38, and filed a claim for refund.
7. On August 28, 2017, CDTFA's Appeals Bureau issued a Decision and Recommendation denying appellants' petition and claim for refund. This appeal followed.

DISCUSSION

Use tax applies to the storage, use, or other consumption in this state of tangible personal property purchased for use and used in California. (R&TC, § 6201.) The tax is owed by the person using or storing the property in California. (R&TC, § 6202(a).) A vehicle (or vessel or aircraft) purchased outside of California, which is later brought into California, is regarded as having been purchased for use in this state if the first functional use of the vehicle was in California. (Cal. Code Regs., tit. 18, § 1620(b)(5)(A).)

As relevant to this transaction, R&TC section 6248(a), establishes a 12-month test for determining whether a vehicle was purchased for use in California and thus subject to use tax. (See also Cal. Code Regs., tit. 18, § 1620(b)(5).) Under this test, it is rebuttably presumed that a vehicle was acquired for storage, use, or other consumption in this state if: the vehicle was first functionally used in California; or was purchased and first functionally used outside of California but was brought into California within 12 months from the date of purchase, and one of the following apply: the vehicle was subject to property tax in this state during the first 12 months

of ownership; the vehicle was purchased by a California resident as defined in section 516 of the Vehicle Code; or the vehicle was used or stored in this state more than one-half of the time during the first 12 months of ownership. (R&TC, § 6248(a)(1- 4); Cal. Code Regs., tit. 18, § 1620(b)(5)(A).)

This presumption may be controverted by documentary evidence that the vehicle was purchased for use outside California during the first 12 months of ownership, including by evidence of registration of the vehicle in another state. (R&TC, § 6248(b); Cal. Code of Regs., tit. 18, § 1620(b)(5)(B).)

R&TC section 6406 provides that a credit shall be allowed against (but to not exceed) a person's California tax on its own storage, use, or consumption of tangible personal property in this state to the extent that the person has paid a retail sales or use tax, or reimbursement therefore, imposed with respect to that property to any other state prior to the storage, use or other consumption of that property in this state. However, this credit is not allowable for tax paid with respect to the subject property to a jurisdiction outside the United States, such as to Canada or to one of its provinces. (R&TC, § 6406.)

Here, there is no dispute that appellants' purchase and first functional use of the vehicle occurred in Ontario, Canada, on July 12, 2016. Title passage and delivery occurred outside California, and, therefore, the purchase occurred outside California. (R&TC, § 6010(a); Cal. Code Regs., tit. 18, § 1628(b)(3)(D).) There is also no dispute that the vehicle was brought into California within 12 months of purchase and that the vehicle was subject to registration during the first 12 months of ownership. Based on the foregoing, it is rebuttably presumed that the vehicle was purchased for use in California, and that appellants owe use tax on the storage and use of the vehicle in California. (R&TC, § 6248(a); Cal. Code Regs., tit. 18, § 1620(b)(5)(A).)

On appeal appellants concede that the vehicle was purchased for use in California within the meaning of R&TC section 6248, and instead they contend that the DMV advised them that use tax would not be due on the vehicle because they had previously paid tax in Canada, prior to entry into California. Appellants argue that they should not be penalized for their reasonable reliance on statements made by the DMV, and therefore they should be relieved of the liability. In addition, appellants contend that as a matter of fairness, they should not be held liable for the tax. Specifically, appellants assert that if the DMV had properly advised them at the time of registration that the vehicle was subject to use tax in this state, appellants could have

immediately returned the vehicle to Canada and not used it at all in this state, thereby avoiding any tax liability.

While the DMV's advice was undisputedly erroneous, we are constrained to follow the law, and there is no authority that allows relief from tax based on allegedly erroneous oral advice received from the DMV.[2] Likewise, appellants' fairness argument is unavailing because the tax laws apply to the facts as they actually occurred, and not as they might have been. (*Wallace Berrie & Company, Inc. v. State Board of Equalization* (1985) 40 Cal.3d 60, 70 ["Tax law necessarily is based upon what has been done, not what might have been done."].)

Appellants also contend that the DMV advised them that the vehicle was to be treated as an "out of state" registration that would give them a credit for tax paid out of state; however, this credit is not allowable for sales or use tax paid to a jurisdiction outside the United States, such as to Canada or to one of its provinces. Therefore, as appellants paid tax on the vehicle in Ontario, Canada, they are not entitled to this credit.

HOLDING

Appellants are liable for use tax of $4,875.06 on the purchase price of their vehicle.

DISPOSITION

CDTFA's action in denying the petition and claim for refund is sustained.

DocuSigned by:
Jeff Angeja
0D390BC3CCB14A9...
Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:
Teresa Stanley
0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Alberto Rosas
2281E8D466014D1...
Alberto T. Rosas
Administrative Law Judge

[2] R&TC section 6593.5(a)(2) is relevant but inapplicable here because it only allows for relief of *interest* where a person's failure to pay use tax on a vehicle was the direct result of an error by the DMV in calculating the tax. Appellants' failure to pay tax here did not result from a DMV computation error. Likewise, R&TC section 6596 is relevant but inapplicable here because it allows for relief based on a taxpayer's reliance on erroneous, written advice from CDTFA, and here appellants did not rely on any written advice from CDTFA.