

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
JACOB DEAN STEWARD

) OTA Case No. 18011990
) CDTFA Acct. No. 84-161186
) CDTFA Case ID: 661880
)
) Date Issued: November 13, 2019
)

OPINION

Representing the Parties:

For Appellant:

Jacob Dean Steward
Sean Cason, Representative

For Respondent:

Kevin B. Smith, Tax Counsel III
Monica Silva, Tax Counsel IV
Lisa Renati, Hearing Representative

For Office of Tax Appeals:

Josh Lambert, Tax Counsel

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Jacob Dean Steward (appellant) appeals a decision by respondent California Department of Tax and Fee Administration (CDTFA) ¹ denying appellant’s timely petition for redetermination of a Notice of Determination (NOD), which assessed a tax liability of \$8,878.35, plus accrued interest.

Office of Tax Appeals (OTA) Administrative Law Judges Linda C. Cheng, Richard Tay, and Jeffrey G. Angeja, held an oral hearing for this matter in Los Angeles, California, on September 17, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

¹ Sales and use taxes were formerly administered by the State Board of Equalization. In 2017, functions of the Board relevant to this case were transferred to the California Department of Tax and Fee Administration (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.

ISSUES

1. Whether appellant's use of a recreational vehicle (RV) in California is subject to use tax.
2. Whether appellant is entitled to an offset for tax paid to the state by a third party.

FACTUAL FINDINGS

1. At all relevant times, appellant was a California resident. On or about November 30, 2010, appellant entered into an agreement to purchase an RV for \$101,866.97 from a vehicle dealer (seller) located in Santa Fe Springs, California.
2. Also on November 30, 2010, appellant signed a BOE-447 form, "Statement Pursuant to Section 6247 of the Sales and Use Tax Law," attesting that the RV was to be delivered to an out-of-state location and used outside of California, which relieved the seller from the obligation to collect use tax from appellant. (See R&TC, § 6247.)
3. On December 1, 2010, appellant took delivery of the RV in Arizona. Appellant and an agent for the seller executed and notarized a BOE-448 form, "Statement of Delivery Outside California" certifying that the RV was delivered to appellant in Arizona. The sale qualified as an exempt sale in interstate commerce (see R&TC, § 6396), and therefore the seller did not collect or remit any sales tax on this transaction.
4. On August 23, 2011, CDTFA received a consumer use tax return that claimed the purchase of the RV was not subject to California use tax because it was not purchased for use in California.
5. Service records from the seller of the RV indicate that the RV was present in California for service during the following time periods: (1) January 7, 2011, through January 21, 2011 (16 days); (2) March 3, 2011, through March 23, 2011 (22 days); (3) May 12, 2011, through May 24, 2011 (14 days); (4) September 21, 2011, through October 24, 2011 (34 days); (5) October 31, 2011, through November 10, 2011 (11 days); and (6) November 29, 2011, through December 16, 2011 (18 days). In total, the RV was at the service facility in California for 115 days.
6. On October 9, 2012, CDTFA issued an NOD to appellant for \$8,878.35 in tax, plus accrued interest, concluding that the RV was purchased for use in California. Appellant filed a timely petition for redetermination, contending that the RV was not purchased for use in California. CDTFA denied appellant's petition. This appeal followed.

7. On November 16, 2012, the seller replaced appellant's original RV with a new 2013 RV, under warranty, at no additional cost to appellant, except for certain upgrades for which appellant paid the sales price as well as tax reimbursement, and these upgrades are not at issue herein.
8. During the course of this appeal, CDTFA verified that the seller paid sales tax of \$8,412 to this state in connection with the warranty replacement RV.
9. By email dated July 17, 2019, CDTFA conceded that appellant is entitled to a \$4,875.22 credit against the proposed liability for sales tax paid to the State of Arizona on the original RV, pursuant to R&TC section 6406.

DISCUSSION

Issue 1: Whether appellant's use of a RV in California is subject to use tax.

On appeal, appellant asserts that he purchased the RV for use in Arizona, and that he only brought the RV into California for purposes of repair. As relevant here, for purchases of vehicles that occurred after September 30, 2008, R&TC section 6248, subdivision (a), establishes a 12-month test for determining whether a vehicle was purchased for use in California and thus is subject to use tax. (See also Cal. Code Regs., tit. 18, § 1620, subd. (b)(5).)

When the vehicle is first functionally used outside of California and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur: (1) the vehicle was purchased by a California resident as defined in section 516 of the Vehicle Code; (2) the vehicle was subject to registration under Chapter 1 of Division 3 of the Vehicle Code during the first 12 months of ownership; (3) the vehicle was subject to property tax in this state during the first 12 months of ownership; or 4) the vehicle was used or stored in this state more than one-half of the time during the first 12 months of ownership.² (Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(A).)

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

²Section 516 of the Vehicle Code provides, among other things, that a "resident" is any person who manifests an intent to live or be located in this state on more than a temporary or transient basis, and that presence in the state for six months or more in any 12-month period gives rise to a rebuttable presumption of residency.

(b)(5)(B).) This evidence may include, but is not limited to, documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. (*Ibid.*) The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. (*Ibid.*) The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility. (*Ibid.*)

Here there is no dispute that appellant took possession of the RV outside of California and first functionally used the vehicle outside of California. There is also no dispute that appellant drove the RV back into California on January 7, 2011, which was within 12 months of the purchase date of November 30, 2010, when appellant brought the RV back for service at the dealership's Santa Fe Springs location. Because appellant was a California resident at the time of purchase and the RV was brought back into California within 12 months of its purchase, it is rebuttably presumed that the RV was purchased for use in California. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(A)1.)

Based on the service records, the RV was located in California for at least 115 days during the 12-month test period. Appellant states that the sole purpose for these trips was for service and/or repairs; however, the regulation only allows purchasers to bring a vehicle into California for repairs for up to 30 days. (Cal. Code Regs., tit. 18, § 1620, subd. (b)(5)(A)1.) Appellant has exceeded this safe-harbor period, and therefore, appellant's repair time is not excluded from appellant's use of the RV in California.

As stated above, the RV was in California for at least 115 days, during which time appellant drove the RV into this state, repaired it here, and stored it here, each of which is a taxable use in this state. (R&TC, § 6009 ["Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property].) Although appellant provided evidence of charges for the rental of an RV storage facility in Arizona during the test period, such charges alone do not establish the presence of the RV in that state (e.g., such charges were incurred even when the RV was physically present in California being repaired). Likewise, appellant has submitted evidence of fuel purchases in Arizona; however, even assuming the fuel was purchased for the RV, those few instances are insufficient to rebut the

presumption that the RV was purchased for use in this state, especially in light of the undisputed 115 days in which the RV was in this state for repair. Therefore, we conclude that appellant has failed to rebut the presumption that it purchased the RV for use in this state, and therefore appellant's use of the RV in this state is taxable.³

Issue 2: Whether appellant is entitled to an offset for tax paid to the state by a third party.

If appellant is entitled to offset the sales tax paid by the seller against appellant's own use tax liability, appellant's remaining liability would be reduced to zero. As herein relevant, the Sales and Use Tax Law provides that a person who claims that a tax liability on a transaction should be offset against tax reimbursement paid to the state by another person has the burden of proving that tax reimbursement was in fact paid to the state on the same transaction by the other person. In the absence of such proof no offset will be allowed. (Cal. Code Regs., tit. 18, § 1700, subd. (b)(4).) The "same transaction" means all activities involved in the acquisition and disposition of the same property. (*Ibid.*)

Here, it is undisputed that the seller paid sales tax to CDTFA, not tax reimbursement collected from appellant or some other consumer. Furthermore, the seller paid the sales tax in connection with the transfer of the replacement RV in 2013, which is not the same property as the original RV appellant purchased in 2010. Therefore, the seller did not pay tax reimbursement on the "same transaction" at issue herein (i.e., the sale of the original RV). Accordingly, appellant is not entitled to offset the sales tax paid by the seller on a separate transaction against appellant's use tax liability on the original purchase.

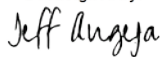
³ We sympathize with appellant's plight, in that he had no control over the substantial length of time the repairs took; however, we are bound by the 30-day safe harbor provided by the regulation. (*Newco Leasing, Inc. v. State Board of Equalization* (1983) 143 Cal.App.3d 120, 124.)

HOLDINGS

1. Appellant’s use of the RV he purchased in 2010 in California is subject to use tax.
2. Appellant is not entitled to an offset against his use tax liability with sales tax paid to the state by a third party on a separate transaction.

DISPOSITION


As conceded by CDTFA, appellant is entitled to a \$4,875.22 credit for sales tax paid to the State of Arizona. CDTFA’s action in denying appellant’s petition is otherwise sustained.

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 Jeffrey G. Angeja
 Administrative Law Judge

We concur:

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 Linda C. Cheng
 Administrative Law Judge

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 Richard I. Tay
 Administrative Law Judge