

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
B. POOL

) OTA Case No. 21129326
) CDTFA Case ID 080-068
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Carlos Meza, Attorney

For Respondent: Courtney Daniels, Tax Counsel III

For the Office of Tax Appeals: Oliver Pfof, Tax Counsel

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, B. Pool (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant’s petition for redetermination of a Notice of Determination (NOD) dated July 6, 2016. The NOD is for use tax of \$5,202, plus applicable interest in connection with appellant’s purchase of a vessel on January 14, 2014, for \$65,000.

Office of Tax Appeals (OTA) Administrative Law Judges Andrew Wong, Josh Aldrich, and Huy “Mike” Le held an oral hearing for this matter in Cerritos, California, on January 26, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant’s storage, use, or other consumption of a vessel in California is subject to tax.

FACTUAL FINDINGS

1. At all times relevant to the facts of this appeal, appellant was a California resident.
2. On January 14, 2014, in Oregon, appellant purchased for his own personal, non-

- commercial use a sailing yacht (Vessel) for \$65,000. The sellers were Oregon residents who did not hold, and were not required to hold, a California seller's permit. Appellant did not remit any sales or use tax to the Oregon sellers in connection with his purchase.
3. On January 28, 2014, appellant registered the Vessel with the state of Oregon, but did not remit any sales or use tax to that state.¹ The Oregon registration expired on December 31, 2016. Appellant also registered the Vessel with the U.S. Coast Guard.
 4. The Vessel remained in Oregon for maintenance and repairs at a slip appellant leased from a Portland marina on a month-to-month basis until October 7, 2014, when appellant and the Vessel departed that state.
 5. Appellant then sailed the Vessel to five individual harbors in California, where it remained for a total of nearly three months:
 - a. Bodega Bay, from October 8 to November 18, 2014;
 - b. Monterey Bay, from November 19 to 29, 2014;
 - c. Morro Bay, from November 29 to December 13, 2014;
 - d. Santa Barbara, from December 13 to 20, 2014; and
 - e. San Pedro, from December 21, 2014, to January 1, 2015.
 6. Appellant docked the Vessel in Bodega Bay for refuge and repairs after encountering a severe gale-force storm, which damaged the Vessel. Appellant subsequently docked the Vessel in the other four California ports for rest and/or repairs, maintenance, and supplies. While the Vessel was docked in these California ports, appellant personally performed all repairs and maintenance on the Vessel, and he regularly returned to his home in Orange County, California, for work as a dive boat captain for scuba diving charters.
 7. On January 1, 2015, appellant and the Vessel departed San Pedro, California, and, on January 2, 2015, arrived in Ensenada, Mexico.
 8. In Ensenada, appellant leased a slip on a month-to-month basis at a marina, where the Vessel remained for approximately three months.

¹ Oregon does not have a general sales or use tax. (*Sales Tax in Oregon*, Oregon Department of Revenue, <https://www.oregon.gov/dor/programs/businesses/Pages/sales-tax.aspx>.)

9. On or about March 30, 2015, appellant sailed the Vessel to San Diego, California. Thereafter, he sailed the Vessel to a mooring he owned in Newport Beach, California, where it remained until at least November 18, 2021.²
10. Based on information received from the U.S. Coast Guard regarding appellant's purchase of the Vessel, CDTFA asked appellant to complete a sales and use tax return. On that tax return, appellant reported that the Vessel was not subject to the California use tax because he did not purchase the Vessel for use in California.
11. After reviewing appellant's tax return and other documents submitted by appellant, CDTFA determined that appellant's storage, use, or other consumption of the Vessel in California was subject to use tax and issued the NOD to him.
12. Appellant timely petitioned CDTFA for redetermination, and CDTFA subsequently issued a decision denying his petition.
13. This timely appeal to OTA followed.

DISCUSSION

Use tax applies to the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. (R&TC, § 6201.) The person storing, using, or otherwise consuming the property in this state is liable for the use tax. (R&TC, § 6202(a).) Generally, it is presumed that tangible personal property brought to this state by the purchaser was purchased from a retailer for storage, use, or other consumption in this state. (R&TC, § 6246.)

If a vessel is purchased outside of California by a California resident,³ 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 vessel was acquired for storage, use, or other consumption in this state and is subject to use tax. (R&TC, § 6248(a); Cal. Code Regs., tit. 18, § 1620(b)(5)(A).) This presumption may be controverted by documentary evidence that the vessel was purchased for use outside of this state during the first 12 months of ownership.

² This is the date CDTFA issued its decision, which indicated that “to this day” (i.e., the date of CDTFA's decision) the Vessel remained moored at appellant's Newport Beach slip, where Orange County assessed it for property taxes that appellant paid every year.

³ As relevant here, a California resident means any person who manifests an intent to live or to be located in this state on more than a temporary or transient basis. (Veh. Code., § 516.)

(R&TC, § 6248(b); Cal. Code Regs., tit. 18, § 1620(b)(5)(B).) This evidence may include, but is not limited to, evidence of registration of that vessel with the proper authority, outside of this state. (*Ibid.*)

The general presumption in R&TC section 6246 that property brought to California by the purchaser was purchased for use in this state is overcome when the purchaser demonstrates that the property was purchased *with an intention to use it elsewhere*. (*Western Contracting Corp. v. State Bd. of Equalization* (1968) 265 Cal.App.2d 568, 575.) This clarifies the type of evidence necessary to rebut the more specific presumption in R&TC section 6248 and California Code of Regulations, title 18, (Regulation) section 1620(b)(5) that a vessel was purchased for use in California: documentary evidence that, at the time of sale, the purchaser contemplated using the vessel outside of California during the purchaser's first 12 months of ownership.

Except as otherwise specifically provided by law, the burden of proof is upon the appellant as to all issues of fact and requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(a) & (c).)

Here, it is undisputed that appellant was a California resident for all times relevant to this appeal, purchased and first functionally used the Vessel in Oregon, and brought the Vessel back to California within 12 months of purchase. Accordingly, it is rebuttably presumed that appellant purchased the Vessel for storage, use, or other consumption in California and is subject to use tax.

On appeal, appellant argues that, at the time he purchased the Vessel in January 2014, he had intended to keep it in Oregon for necessary repairs, and then, during the summer of 2014, either in June or July, to sail it directly to Mexico, where it would remain indefinitely. Appellant testified that, at the time the Vessel departed Oregon, he and his crew were prepared for a 7-to-10-day journey to Ensenada, Mexico, which is typical for a boat of the Vessel's size, before heading to Cabo San Lucas. According to appellant, he had planned to return to the Vessel in Mexico every three months for vacation and to sail on the Sea of Cortez and out of San Jose del Cabo for a couple of years.

Appellant maintains that he never intended to bring the Vessel to California, even though he owned a mooring in Newport Beach. According to appellant, that mooring was already occupied by another vessel he owned, and acquiring a second mooring in southern California would be costly, so bringing the Vessel to California was not a feasible option at the time of its

purchase.⁴ Appellant acknowledges that the necessary repairs were more extensive than anticipated, which delayed his departure from Oregon until October 2014.

Appellant also argues that, but for the severe gale-force storm, he would have been able to sail the Vessel directly from Oregon to Mexico. According to appellant, the storm damaged the Vessel, forced him to dock it in Bodega Bay, California (for his and his crew's safety), and caused a subsequent series of unforeseen delays. Appellant contends that the unforeseen delays resulted from the following: (1) limited availability of a crew to help him sail the Vessel directly to Mexico after he repaired the storm damage to the Vessel, which forced him to sail alone for periods of time; and (2) his own work schedule, which required him to return periodically to his home in Orange County. Finally, appellant argues that it would be unconscionable and unjust to assess use tax for bringing the Vessel into California due to necessity, an emergency, and unforeseen circumstances.

In support of his contentions, appellant provided the following documentary evidence: (1) a printout of a Pacific northwest weather map for October 8, 2014; (2) a receipt dated October 8, 2014, from a Bodega Bay marina; (3) a handwritten captain's log of Vessel-related events for the period of September 30, 2014, through January 2, 2015; (4) invoices relating to repairs made to the Vessel in Oregon from February through September 2014, as well as a list of damage suffered by, and repairs made to, the Vessel from October 8, through December 31, 2014; and (5) bank account records showing repair expenditures and marina fees for the Vessel from February 2014 through May 2015. According to the captain's log entry for September 30, 2014, appellant and the Vessel departed Astoria, Oregon, at 12:50 p.m., with the following note: "Start Of Voyage South To Mexico."

During the January 26, 2023 oral hearing, appellant testified to the following. At the time he purchased the Vessel in Oregon in January 2014, he did not make, or contract for, any advance arrangements for storing the Vessel in Mexico because marinas in Mexico had communicated to him that they had plenty of availability and he had yet to decide on a marina at which to moor the Vessel. He also testified that he requested by email quotes for monthly fees, incidentals, and insurance for the Vessel during its time in Mexico, but did not save any of these emails. Appellant testified that, although he cleared Mexican customs and satisfied all the

⁴ However, as noted in the factual findings, the Vessel returned to California on or about March 30, 2015. By that time, appellant had apparently sold the other vessel, which allowed the Vessel at issue to moor in Newport Beach, where it remained until at least November 2021. (See fn. 2, *ante*, page 3.)

legalities required of the Vessel upon entering Mexico, he did not register it there because that was not necessary. The record does contain a “Mexico Watercraft Liability Policy” (Mexico insurance policy) issued on December 24, 2014, when the Vessel was still in San Pedro, California, with an effective date of January 1, 2015, and an expiration date of January 1, 2016.

Here, appellant testified about his intent to sail the Vessel directly from Oregon to Mexico, the circumstances surrounding its entry into California, and the ensuing events that led the Vessel to remain in California for nearly three months. However, to rebut the presumption that he purchased the Vessel for use in California, oral testimony is insufficient; appellant must provide documentary evidence. (R&TC, § 6248(b); Cal. Code Regs., tit. 18, § 1620(b)(5)(B).)

After reviewing the written record and the parties’ exhibits, OTA finds that most of the provided documents relate to why appellant first brought the Vessel to California and what happened to it while it was here, but do not show that, at or around the time of the Vessel’s purchase, appellant contemplated using the Vessel outside of California during his first 12 months of ownership. The most relevant written evidence are the following three documents: (1) the Vessel’s Oregon registration, which expired on December 31, 2016, well after the first 12 months of appellant’s ownership of the vessel; (2) the September 30, 2014 entry in appellant’s captain’s log noting the “Start Of Voyage South To Mexico;” and (3) the Vessel’s Mexico insurance policy, which was effective for all of 2015. OTA will evaluate the evidentiary value of each.

First, the Vessel was registered on January 28, 2014, and its Oregon registration expired on December 31, 2016. This constitutes some evidence that appellant purchased the Vessel for use in Oregon during the first 12 months of his ownership. However, undercutting this is appellant’s stated intent to repair the Vessel in Oregon then sail it to Mexico in either June or July 2014, within approximately six months of the Vessel’s purchase and well before the Vessel’s Oregon registration expired. In fact, the Vessel departed Oregon in October 2014 and nothing in the record indicates that it has returned to Oregon since. Accordingly, OTA finds that the Vessel’s Oregon registration does not constitute persuasive evidence that appellant purchased the vessel for use in Oregon (i.e., outside of California) for the entirety of appellant’s first 12 months of ownership, but only some part of it.

Second, regarding the September 30, 2014 entry in appellant’s captain’s log noting the start of the Vessel’s voyage south to Mexico, this constitutes some evidence that appellant

intended to use the Vessel in Mexico (i.e., outside of California) at some point in time. However, appellant made this entry more than eight months after purchasing the Vessel on January 14, 2014, so it has little value regarding appellant's intended use of the boat at the time of appellant's purchase. Further, this entry does not preclude the possibility that the Vessel would have traversed through (i.e., been stored, used, or consumed in) California during such a voyage to Mexico—which is in fact what happened. Thus, OTA finds that the September 30, 2014 entry in the captain's log is not persuasive evidence that, at the time of the Vessel's purchase, appellant intended to use it outside of California during the first 12 months of ownership.

Third, regarding the Vessel's Mexico insurance policy, this constitutes documentary evidence that appellant intended to use the Vessel in Mexico during 2015. In fact, the Vessel departed San Pedro a week later, on January 1, 2015, and arrived in Ensenada, Mexico, on January 2, 2015. However, the Mexico insurance policy's evidentiary value regarding appellant's intent to use the Vessel outside of California at the time of its purchase in January 2014 is limited because that document was issued nearly a year later, on December 24, 2014, when the Vessel was already in San Pedro, California. The Mexico insurance policy would have had more persuasive force had appellant purchased it either around the time he purchased the Vessel in January 2014 or around the time the Vessel left Oregon in late September 2014 for what appellant testified was typically a 7-to-10-day voyage to Ensenada, Mexico. Indeed, documentation of other advanced arrangements for the Vessel's extended stay in Mexico (e.g., a written contract or inquiries/quotes for a long-term stay at a marina) made prior to or during its departure from Oregon would also be more persuasive because they would have evidenced an intent to use the Vessel outside of California (i.e., in Mexico) for an extended period of time. However, appellant testified that either such advanced arrangements were unnecessary, or he did not save emails of his inquiries. In any case, OTA finds that the Mexico insurance policy is of little evidentiary value for proving appellant's intent for the Vessel at the time of purchase because it was issued while appellant and the Vessel were already in California. Further, having reviewed the record, OTA concludes that the documentary evidence therein does not satisfy appellant's burden to rebut the presumption that he purchased the Vessel for storage, use, or other consumption in California and is subject to use tax.

As relevant here, there is also a repair, retrofit, or modification exemption for vessels subject to the 12-month test described in Regulation section 1620(b)(5): vessels, the purchase and use of which are subject to the 12-month test, that are brought into California exclusively for the purpose of repair, retrofit, or modification will not be deemed acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is performed by a repair facility that holds an appropriate permit issued by CDTFA and is licensed to do business by the city, county, or city and county in which it is located if the city, county, or city and county so requires. (Cal. Code Regs., tit. 18, § 1620(b)(5)(D).)

Here, according to appellant, the Vessel docked in various California ports for some combination of refuge, repair/maintenance, rest, and/or supplies. Appellant also testified that he personally performed all repairs and maintenance on the Vessel. However, the exemption requires that the Vessel be brought into California *exclusively* for repair, retrofit, or modification, and that these must be performed by a permitted and licensed repair facility, neither of which were the case here. Accordingly, appellant's purchase and use of the Vessel in California does not qualify for the repair, retrofit, or modification exemption.

Finally, OTA addresses appellant's argument that it would be unconscionable and unjust to conclude that he purchased the Vessel for use in California and subject him to use tax because he only brought the Vessel into California seeking a safe harbor from a severe storm. OTA commends appellant for prioritizing his safety and the safety of his crew. However, R&TC section 6248 and Regulation section 1620(b)(5) are clear that, regardless of the circumstances that brought the Vessel to California in the first place, it is presumed that appellant acquired the Vessel for use in California and the Vessel is subject to use tax. Further, appellant either did not keep, or has not supplied, sufficient documentary evidence to rebut that presumption.

HOLDING

Appellant’s storage and use of a vessel in California is subject to use tax.

DISPOSITION

CDTFA’s action is sustained.

DocuSigned by:

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Andrew Wong
Administrative Law Judge

We concur:

DocuSigned by:

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Josh Aldrich
Administrative Law Judge

DocuSigned by:

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Huy “Mike” Le
Administrative Law Judge

Date Issued: 4/27/2023