

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230312779  
M. PLASIL ) CDTFA Case ID: 3-154-832  
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**OPINION**

Representing the Parties:

For Appellant: M. Plasil  
For Respondent: Venessa Bedford, Tax Counsel III

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6901, M. Plasil (appellant) appeals a decision issued by the California Department of Tax and Fee Administration (respondent)<sup>1</sup> denying appellant's claim for refund of \$1,045 in use tax for a vehicle with a purchase date of September 20, 2019.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether California use tax applies to appellant's storage, use, or consumption of the vehicle.

**FACTUAL FINDINGS**

1. At all relevant times appellant was a California resident.
2. On or about August 9, 2019, appellant obtained legal title to a 1970 AM General M35a2 military truck (vehicle) for \$11,000 from an out-of-state private party.

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<sup>1</sup> 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 respondent. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "respondent" shall refer to the board.

3. Appellant hired a common carrier to pick up and deliver the vehicle to appellant at a location in California near his residence.<sup>2</sup>
4. Appellant registered the vehicle with the California Department of Motor Vehicles (DMV), paying total taxes and fees of \$1,594 (including use tax) as part of the registration.<sup>3</sup> On the DMV registration form, appellant reported a purchase date of September 3, 2019, to the DMV.<sup>4</sup>
5. On October 28, 2019, appellant filed a civil action against the seller of the vehicle in Superior Court in California. On December 26, 2019, the court found that it lacked jurisdiction over the seller and dismissed the case without prejudice.
6. Appellant timely filed a claim for refund for \$1,045 in use tax, asserting that the vehicle was inoperable, and therefore no use tax was due.
7. Respondent issued a Notice of Pending Denial of Claim for Refund on January 19, 2022, which appellant appealed.
8. Respondent contacted DMV to request a breakdown of the amount paid. Respondent obtained DMV records that showed appellant paid \$514 in use tax.<sup>5</sup>
9. Respondent issued a decision denying the claim for refund on January 31, 2023.
10. This timely appeal followed.

### DISCUSSION

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 is subject to use tax, unless otherwise exempt or excluded. (R&TC, § 6201.) Generally, the person storing, using, or otherwise consuming tangible personal property in this state is liable for the use tax. (R&TC, § 6202(a).) For purposes of the Sales and Use Tax Law, the term “purchase” means and

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<sup>2</sup> According to respondent, appellant stated at the appeals conference, that the transport company’s truck was too large to navigate the narrow streets near his home. Therefore, the vehicle was delivered to appellant at shopping mall parking lot near his residence.

<sup>3</sup> There is no dispute that Claimant paid \$1,594 in total taxes and fees to the DMV, but the parties dispute how much of that amount was for use tax (as well as whether any use tax was due at all). Claimant asserts \$1,045 of the amount was for use tax, while respondent asserts the DMV confirmed that only \$514 was for use tax.

<sup>4</sup> Respondent’s Decision lists a purchase date of September 20, 2019.

<sup>5</sup> Respondent also obtained a copy of an incomplete application for registration that showed \$1150 in use tax.

includes any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property (TPP) for a consideration. (R&TC, § 6010(a).) For sales and use tax purposes, “storage” includes any keeping or retention of TPP in this state of property purchased from a retailer for any purpose, except for sale in the regular course of business or subsequent use solely outside this state, and “use” includes the exercise of any right or power over tangible personal property incident to the ownership of that property. (R&TC, §§ 6008, 6009.)

As relevant here, when a vehicle required to be registered under the Vehicle Code is sold by an unlicensed or uncertified retailer (i.e., a retailer not licensed or certified pursuant to the Vehicle Code, as described in R&TC, § 6292, subdivision (a)), the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the vehicle shall pay the use tax to the DMV at the time of application for registration. (R&TC, § 6292(a); Cal. Code Regs., tit. 18, § 1610(c)(1).) However, the involuntary transfer of a vehicle, such as pursuant to a court order, is generally not subject to use tax. (Dept. Publ. 52 (*Vehicles and Vessels: Use Tax*) (April 2022), p. 5.)<sup>6</sup> A taxpayer bears the burden of proving entitlement to an exemption or exclusion and must provide some credible evidence of that entitlement. (*Appeal of Owens-Brockway Glass Container*, 2019-OTA-158P.) The applicable burden of proof is by a preponderance of the evidence. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Bachor (Rehearing)* 2020-OTA-172P.)

Appellant makes three arguments on appeal. First appellant argues that use tax does not apply to appellant’s storage and use of the vehicle pursuant to California Code of Regulations, title 18, (Regulation) section 1620(b)(2)(C)(3)<sup>7</sup>, because the first functional use of the vehicle has not yet occurred. Appellant argues that the vehicle was designed to safely carry people or loads on state highways and routes, but the vehicle was nonfunctional when appellant received it.

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<sup>6</sup> Respondent’s Publication 52 states, as relevant here: “If you have assumed ownership as the result of an involuntary transfer of ownership, you are not required to pay use tax on the transferred vehicle or vessel. An *involuntary transfer* is one in which you assume ownership of a vehicle or vessel due to circumstances beyond your control. For example, you may have acquired the vehicle or vessel as the result of a court order . . .” (Italics in original.)

<sup>7</sup> Regulation § 1620(b)(2)(C)(3) states in part, “. . . property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. For purposes of this regulation, “functional use” means use for the purposes for which the property was designed.”

Appellant asserts that he did not purchase the vehicle for storage or repair and tried to refuse delivery of the vehicle.

Here appellant, a California resident, purchased the vehicle from an out-of-state private party seller, with the intent to store, use, or otherwise consume the vehicle in California. Appellant did not pay tax or tax reimbursement to the seller. Further, the vehicle was delivered to appellant in California and appellant, thereafter, used and stored the vehicle in California. Thus, appellant's purchase of the vehicle is subject to use tax absent an exemption or exception. (R&TC, §§ 6201, 6202). While appellant contends that he should not have to pay use tax because the vehicle was inoperable, there is no exception or exemption from use tax for purchases that do not meet the buyer's expectations, or which are first functionally used outside the state, or which are not functional.<sup>8</sup> Even though the vehicle was inoperable, a purchase occurred for purposes of the Sales and Use Tax Law because the seller transferred TPP to appellant in exchange for consideration. (*See* R&TC, § 6010(a).)

Second, appellant asserts that the transfer is not subject to use tax because the vehicle was transferred via court order when the court dismissed appellant's claim due to lack of jurisdiction. Appellant has also failed to show that the vehicle was transferred to him via court order. The Minute Order provided with respondent's Decision states that the case was dismissed; the Court does not order the transfer of the vehicle to appellant. Further, possession of the vehicle was transferred when the purchase occurred, which is at the time the seller delivered the vehicle to appellant in exchange for consideration. Finally, legal title was transferred to appellant on August 9, 2019, the date of title transfer specified in the Assignment of Title document, which appellant and the seller both signed before a Notary Public. Thus, appellant has failed to meet his burden that use tax does not apply.

Appellant's third argument is regarding the amount of the claim for refund due. Appellant contends that he paid use tax of \$1,150 in use tax to the DMV. Respondent contends that it only received \$514 in use tax from the DMV. Appellant has failed to show that he

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<sup>8</sup> Appellant contends that the vehicle was not functionally used in California, and as such his storage of the vehicle is nontaxable pursuant to Regulation section 1620(b)(3). Nevertheless, Regulation section 1620(b)(3) is not an exemption or exclusion. Instead, it is a presumption of taxability. Purchases of vehicles by a California resident and which are brought into California within certain timeframes are also presumed taxable. The transaction at issue was presumed taxable because appellant reported to the DMV that his is a California resident, and he brought the vehicle into California within the specified timeframe. (Cal. Code Regs., tit. 18, § 1620(b)(3).)

overpaid use tax or that use tax was not due on his purchase of the vehicle. Thus, appellant has failed to show that he is entitled to a refund.

HOLDING

California use tax applies to appellant’s storage, use, or consumption of the vehicle.

DISPOSITION

Respondent’s action denying appellant’s claim for refund is sustained.

DocuSigned by:  
*Natasha Ralston*  
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Natasha Ralston  
Administrative Law Judge

We concur:

DocuSigned by:  
*Josh Aldrich*  
48745B5806914B4...  
Josh Aldrich  
Administrative Law Judge

DocuSigned by:  
*Keith T. Long*  
DC88A60D8C3E442...  
Keith T. Long  
Administrative Law Judge

Date Issued: 8/29/2023