OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 230312725
	CDTFA Case ID: 3-613-148
HD CARRIERS LLC	

OPINION

Representing the Parties:

For Appellant:	Eric C. Beauchamp, CEO
For Respondent:	Courtney Daniels, Attorney Chad Bacchus, Attorney Jason Parker, Chief of Headquarters Ops.
For Office of Tax Appeals:	Daniel Cho, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6901, HD Carriers LLC (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant's claim for refund of $3,815.[1]

Office of Tax Appeals Administrative Law Judges Andrew Wong, Josh Lambert, and Lauren Katagihara held an oral hearing for this matter in Cerritos, California, on February 13, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUE

Whether appellant is entitled to a refund of the use tax paid in association with its purchase and use of a commercial vehicle (vehicle) in California.

[1] This amount consists of $3,800 of use tax and a $15 fee imposed by the California Department of Motor Vehicles.

FACTUAL FINDINGS

1. Appellant operates an interstate motor carrier business. At all times relevant herein, appellant's business was registered in California.
2. On or about November 26, 2021, appellant purchased a vehicle from a private individual for $38,000 in Sacramento, California.
3. On November 29, 2021, appellant registered the vehicle with the California Department of Motor Vehicles (DMV). Appellant intended to register the vehicle under the DMV's International Registration Plan (IRP), but the vehicle was instead assigned a "baseline registration."[2] Appellant paid a use tax of $3,800 and fees of $2,460 to the DMV for the registration.
4. Thereafter, appellant drove the vehicle to Bakersfield, California.
5. On December 7, 2021, appellant changed its registration of the vehicle to an apportioned license under the DMV's IRP for the purpose of operating the vehicle in interstate and foreign commerce.
6. It is undisputed that appellant's first functional use of the vehicle was on December 17, 2021, when appellant loaded a shipment of goods onto the vehicle in Fontana, California, and transported that shipment of goods to Kansas.[3]
7. Appellant requested the DMV refund the use tax and fees that appellant paid in association with the baseline registration. The DMV subsequently refunded $2,445 of the fees that appellant paid for the baseline registration, but did not refund the remaining $3,815, as it was comprised of use tax ($3,800) and fees associated with the use tax ($15). The DMV informed appellant that its request for a refund of the $3,815 needed to be directed to CDTFA.
8. Appellant submitted a $3,815 claim for refund to CDTFA. CDTFA denied appellant's claim for refund because the sale of the vehicle occurred in California, and appellant first

[2] The IRP permits certain vehicles to be registered under a single registration plate and registration certificate even though the vehicle is operating in more than one state. (https://www.dmv.ca.gov/portal/vehicle-registration/new-registration/commercial-vehicle-registration/international-registration-program/.) Appellant's use of the term "baseline registration" refers to a registration that permits the vehicle to be operated only in the state in which it has established its place of business (i.e., its "base jurisdiction").

[3] As used herein, "functional use" means use for the purposes for which the vehicle was designed.

functionally used the vehicle in California. As a result, CDTFA concluded that appellant was responsible for use tax.

9. Appellant filed a timely petition for redetermination. In a decision dated January 30, 2023, CDTFA denied the petition for redetermination, and this appeal followed.[4]

DISCUSSION

California imposes sales tax on a retailer's retail sales of tangible personal property sold in this state measured by the retailer's gross receipts, unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale in this state of a vehicle subject to identification under Division 16.5 of the Vehicle Code when the retailer is other than a person required to hold a seller's permit by reason of the number, scope, and character of his or her sales of those vehicles. (R&TC, § 6283(a).)

When sales tax does not apply, 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, measured by the sales price, unless that use is specifically exempted or excluded by statute. (R&TC, §§ 6201, 6401.) The tax is owed by the person (i.e., the taxpayer) using or storing the property in California. (R&TC, § 6202(a).) Exemptions and exclusions are strictly construed against the taxpayer. (*Appeal of Snowflake Factory LLC*, 2020-OTA-270P.) The taxpayer bears the burden of proving entitlement to an exemption or exclusion and must provide some credible evidence of entitlement thereto. (*Ibid.*; *Appeal of Owens-Brockway Glass Container, Inc.*, 2019-OTA-158P.)

Here, there is no dispute that appellant purchased the vehicle in California from a third party who was not required to hold a seller's permit. As a result, appellant's purchase of the vehicle from the third party was not subject to sales tax. When sales tax does not apply, use tax applies, and the purchaser of the vehicle (here, appellant) is responsible for that tax. Appellant purchased the vehicle in California and immediately thereafter stored, used, or consumed the vehicle within California. At the very least, appellant stored the vehicle in California between the date appellant purchased the vehicle (on or about November 26, 2021) and the date it

[4] By the time CDTFA issued its decision, appellant had changed its business registration with the California Secretary of State to a foreign (out of state) limited liability company.

obtained the baseline registration from the DMV (on December 7, 2021). Appellant also used and consumed the vehicle in this state when it drove the vehicle from Sacramento to Bakersfield, and when it first functionally used the vehicle to pick up a shipment of goods in Fontana, California, on December 17, 2021. As such, use tax applies.

Appellant argues that because the vehicle is used in interstate and foreign commerce, and was not functionally used during the short time it had a baseline registration, the use tax was improperly imposed. Said differently, appellant argues that use tax was only imposed because the DMV incorrectly issued appellant a baseline registration.

While the type of registration a purchaser obtains for a vehicle may be an indicator of how the purchaser intends to use that vehicle, it has little to no bearing on whether use tax applies to the purchase of that vehicle. (See R&TC, §§ 6201, 6202, 6248, 6352; Cal. Code Regs., tit. 18, § 1620(b).) Instead, use tax is applicable to any vehicle, however registered, if purchased for storage, use, or other consumption and stored, used, or consumed in this state, unless an exemption applies. (*Ibid.*) One such exemption is for vehicles used in interstate or foreign commerce, but only if the vehicle is purchased outside of California. (R&TC, §§ 6248, 6352; Cal. Code Regs., tit. 18, § 1620(b)(2)(B)1.; *Appeal of Snowflake Factory LLC*, *supra*.)[5] The exemption in Code of Regulations, title 18, section 1620(b)(2)(B)1. requires, among other things, that the vehicle be "used in interstate or foreign commerce prior to its entry into this state," which necessarily means that the purchase of the vehicle must have occurred outside of California. (See also *Appeal of Snowflake Factory LLC*, *supra*.) Moreover, even a vehicle purchased *outside* of the state can be subject to California use tax: if the vehicle's first functional use is *within* California, the law deems the property to have been purchased for use in this state and use tax applies. (Cal. Code Regs., tit. 18, § 1620(b)(3).) It is undisputed that appellant purchased the vehicle in California (negating any possibility that appellant used the vehicle prior to its entry into California) and that its first functional use was within California. Consequently, appellant's use of the vehicle in interstate and foreign commerce after it took possession of the vehicle in California and after it first functionally used it in this state does not preclude CDTFA's imposition of the use tax.

[5] Although the use tax in *Appeal of Snowflake Factory LLC*, *supra*, was associated with the purchase of an aircraft, the relevant statutes and regulations therein apply equally to vehicles. Therefore, *Appeal of Snowflake Factory LLC*, *supra*, has precedential value here.

Appellant asserts that this "narrow" reading of the law is inaccurate because such an interpretation would deter people from purchasing a vehicle in California. According to appellant, there are thousands of people purchasing trucks every week in California, none of whom pay use tax because they received the proper registration from the DMV. Appellant points to the DMV's refund of its fees as evidence that CDTFA's imposition of the use tax was improper.

Appellant's arguments are unavailing. First, the law requires that exemptions and exclusions be strictly construed. (*Appeal of Snowflake Factory LLC, supra*.) Second, appellant's assertion that thousands of vehicle purchasers in California are not paying use tax is neither supported by evidence nor a basis to grant a refund of the use tax. Although purchasers who register their vehicles under the IRP may not be paying use tax to the DMV at the time of registration, the purchasers are still liable for the use tax and CDTFA has the authority to issue to those purchasers a notice of determination for the use tax at any time prior to the expiration of the statute of limitations. (See R&TC, § 6487.) Third, the DMV's refund of its own fees to appellant has no bearing on this appeal. The DMV collects use tax on behalf of CDTFA, but the power to refund that tax rests solely with CDTFA.

Last, appellant argues the payments it has made under the International Fuel Tax Agreement (IFTA) incorporates use tax, and therefore, CDTFA's refusal to refund the use tax constitutes double taxation. IFTA is a multi-jurisdictional agreement among U.S. states and provinces in Canada that encourages the uniform administration and collection of *motor fuel* use taxes. (*May Trucking Co. v. Or. Dept. of Transportation* (9th Cir. 2004) 388 F.3d 1261, 1262-1263.)[6] The tax at issue here is for appellant's use of the vehicle, not its use of motor fuel. The two taxes are separate and distinct, and payment of one neither negates nor reduces the other.

Based on the foregoing, appellant has not established that a refund of the use tax is warranted.

[6] An interstate motor carrier that registers as a licensee under IFTA pays all of its fuel taxes quarterly to its base jurisdiction and the base jurisdiction forwards the appropriate tax amounts to the other jurisdictions in which the motor carrier operated. (*May Trucking Co. v. Or. Dept. of Transportation*, *supra*, 388 F.3d at p. 1263.)

HOLDING

Appellant is not entitled to a refund of the use tax it paid in association with its purchase and use of the vehicle in California.

DISPOSITION

CDTFA's action denying appellant's claim for refund is sustained.

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Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

We concur:

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Andrew Wong
Administrative Law Judge

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

Date Issued: 5/15/2024