

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

325.0103

In the Matter of the Petition)
for Redetermination Under the) DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)
)
G--- V. R---) No. SA UT XX XXXXXX-010
)
)
Petitioner)

The preliminary hearing on the above taxpayer's petition for redetermination was held on November 25, 1987, in Van Nuys, California.

Hearing Officer: John B. Adamo

Appearing for Petitioners: G--- V. R---

Appearing for the Sales and
Use Tax Department: Greg McNamee
Tax Auditor

Protested Items

| <u>Item</u> | <u>State, Local and County</u> |
|-------------------------------------|------------------------------------|
| Purchase of vehicle in West Germany | \$24,500 |

Contention of Petitioner

The automobile was purchased in Europe and remained out of state more than 90 days prior to its entry in California.

Summary

The relevant facts are not in dispute. Petitioner arrived in West Germany on or about August 13, 1985. He purchased the vehicle in question on August 14, 1985 in Frankfurt, West Germany. Thereafter, petitioner used the automobile in Europe on business travel, until he was involved in a serious automobile accident in France on September 17, 1985.

The vehicle was severely damaged in the accident and could no longer be driven. Petitioner avoided serious injury, and made arrangements to have the automobile shipped back to West Germany for extensive repair. Thereafter, petitioner used public transportation, until his return to the United States on October 12, 1985. The vehicle remained in West Germany until the repairs were completed; it was shipped to California from West Germany on December 19, 1985 and arrived in this state on January 14, 1986.

The subject deficiency determination was issued based upon the staff's conclusion that the vehicle was purchased for use in California. The staff concluded that petitioner had used the automobile outside of California for less than 90 days after the date of purchase, and, specifically, that petitioner had "used" the vehicle in Europe for only approximately 60 days, i.e., from August 14 through October 12, 1985.

Analysis and Conclusions

In relevant part, Sales and Use Tax Regulation 1620(b)(3) provides:

"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. When the property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state. Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California." (Emphasis added.)

The term "use" is defined in Revenue and Taxation Code Section 6009 to include "the exercise of any right or power over tangible personal property incident to the ownership of that property...."

It is unclear on what basis the staff has concluded that petitioner used the vehicle out of state for less than 90 days from the date of purchase, or on what basis it has concluded that his "use" ceased on October 12, 1985. Apparently, the staff has acknowledged that petitioner's repair of the car constitutes a "use" thereof because it has included in its computation of use the period from September 17 through October 12, 1985. Nothing happened on the latter date to change petitioner's exercise of power over the vehicle. The automobile remained in West Germany until the repairs were completed in December. The fact that petitioner returned

to the United States on October 12, 1985 does not mean that he ceased to “use” the vehicle in Europe.

Petitioner’s repair of the vehicle in Germany constitutes a “use” thereof under Section 6009. (See also Business Taxes Law Guide Annotation 570.1320, Oct. 15, 1969.) The period of repair did not constitute time for shipment to California. (Cf. Regulation 1620(b)(3).) Petitioner’s use of the vehicle out of state far exceeded 90 days from the date of purchase, and he is therefore not liable for use tax on the purchase.

Recommendation

Cancel the deficiency determination.

John B. Adamo, Hearing Officer

December 8, 1987

Date