

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Administrative Protest
and Claims for Refund Under the Sales and Use
Tax Law of:

PROK ELECTRIC COMPANY

Taxpayer/Claimant (hereafter taxpayer)

Account Number SA V UT 84-174125
Case ID's 807759, 824668, 850189

Rancho Cordova, Sacramento County

Type of Transaction: Vehicle purchase

Date of Transaction: 02/24/12

<u>Item</u>	<u>Disputed Amount</u>
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Purchase of a diesel tractor truck	\$39,000
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	<u>Tax</u>	<u>Penalty</u>
As determined	\$3,024.00	
Finality penalty added		\$302.40
Recommended post-D&R adjustment	<u>00.00</u>	<u>-302.40</u>
Liability as adjusted, protested	<u>\$3,024.00</u>	<u>\$ 00.00</u>
Tax	\$3,024.00	
Interest	<u>403.44</u>	
Total tax and interest	\$3,427.44	
Payments	<u>-3,718.00</u>	
Balance to be refunded	<u><\$ 290.56>¹</u>	

This matter was scheduled for Board hearing in September 16, 2015, but was deferred by the Business Tax and Fee Department to review new evidence submitted by taxpayer. The Appeals Division subsequently decided to issue a second Supplemental D&R to address this new evidence and new contentions raised by taxpayer.

UNRESOLVED ISSUE

Issue: Whether petitioner's purchase of the vehicle is subject to use tax. We find that it is.

¹ As explained under "Other Matters," the Appeals Division recommends that the finality penalty of \$302.40 be relieved. If the Board approves relief of the finality penalty, the amount shown here will be subject to refund.

1 On February 24, 2012, taxpayer purchased a 2008 Volvo diesel tractor truck (vehicle) for
2 \$39,000, and took delivery in Blaine, Washington. Taxpayer had the vehicle driven into California
3 without a load on February 26, 2012, and on February 28, 2012, it submitted form BOE-106,
4 “Vehicle/Vessel Use Tax Clearance Request,” to the Sales and Use Tax Department (Department).
5 The Department issued a clearance certificate, which allowed taxpayer to register the vehicle with the
6 DMV without payment of use tax, but it informed taxpayer that documentation would be required to
7 demonstrate that the vehicle was used primarily in interstate commerce during the six-month period
8 ending August 26, 2012. On February 25, 2013, taxpayer provided bills of lading, driver logs, fuel
9 receipts, and credit card statements from March 2012, through August/September 2012 and quarterly
10 interstate fuel tax agreement returns for 2012. The Department reviewed the documentation and found
11 that over 98 percent of the miles driven during the six-month test period were commercial miles driven
12 in interstate commerce. However, the Department found that the first functional use of the vehicle
13 occurred in California on March 22, 2012, when the vehicle was dispatched from Sacramento to Tracy,
14 California to pick up a load, which it then hauled to Utah. Based on its finding regarding the first
15 functional use of the vehicle, the Department concluded that taxpayer’s purchase of the vehicle was
16 subject to use tax, and issued a Notice of Determination (NOD) on February 7, 2014. On April 4,
17 2014, after the determination became final, taxpayer submitted a letter protesting the determination,
18 which the Department accepted as an administrative protest (Case ID 807759). The Department levied
19 payments from two of taxpayer’s bank accounts, and taxpayer filed timely claims for refund of the
20 payments and the processing fees of \$75 and \$125 imposed by its banks (Case ID’s 824668 and
21 850189).

22 Taxpayer claims that the Department erred in its finding that the vehicle was dispatched from
23 Sacramento to pick up its first load in Tracy because, according to taxpayer, the vehicle was loaded in
24 Sacramento and then was driven directly to Utah (with no intervening dispatch to Tracy). Taxpayer
25 contends that this was a first functional use of the vehicle in interstate commerce, not a first functional
26 use in California, and that the interstate commerce exemption set forth in California Code of
27 Regulations, title 18, section (Regulation) 1620, subdivision (b)(5)(C)1, applies to its purchase and use
28 of the vehicle in interstate commerce. Taxpayer later argued that its February 3, 2012 contract with

1 GFC Transport, Inc. (GFC) constitutes a lease of the vehicle by taxpayer to GFC. Taxpayer argues
2 that, as explained in Business Taxes Law Guides annotations 325.0013.200 and 570.0510, use tax did
3 not apply because the vehicle was driven into California pursuant to a lease agreement. Taxpayer also
4 argues for the first time that use tax did not apply because the vehicle was dispatched to California to
5 pick up a specific load from Taylor Farms in Sacramento. Taxpayer asserts that when the vehicle
6 entered California, GFC intended to use it to make one of its weekly shipments for Taylor Farms as
7 soon as the vehicle was registered.

8 Here, there is no dispute that taxpayer took delivery of the vehicle outside of California and
9 that over 98 percent of the miles driven during the six-month test period were commercial miles driven
10 in interstate commerce. However, Regulation 1620, subdivision (b)(5)(A), states that a vehicle
11 purchased outside of California is regarded as having been purchased for use in this state if the first
12 functional use of the vehicle is in California. Regulation 1620, subdivision (b)(3), states that first
13 functional use occurs when a vehicle is used for its designed purpose. Taxpayer's vehicle was
14 designed to haul freight, and therefore the first functional use occurred when (and where) the vehicle
15 was either first dispatched to pick up a *specific* load of freight, or was first used to haul freight.

16 Here, we note that the *empty* vehicle entered California on February 26, 2012, and did not pick
17 up its first load at Taylor Farms until almost a month later on March 22, 2012. Thus, it appears that the
18 empty vehicle was driven from its out-of-state delivery location (in Washington) into California with
19 the intention of transporting some future payload from Taylor Farms, but not a *specific* payload at that
20 time. Based on our finding that the vehicle was not first dispatched to pick up a specific payload while
21 it was located out of state, we conclude that the first functional use of the vehicle did not occur out of
22 state. Next, since the vehicle was first dispatched to pick up a specific load of freight while it was in
23 California, and was first used to haul freight in California (either in Tracy or Sacramento), we find that
24 the vehicle was located in California during its first functional use, thus first functionally used in this
25 state. Accordingly, we conclude that the interstate commerce exemption set forth in Regulation
26 1620, subdivision (b)(5)(C)1, is not applicable, and taxpayer's purchase of the vehicle is subject to use
27 tax.

Taxpayer did not timely pay or petition the NOD issued on February 7, 2014, and a finality penalty of \$302.40 was added on March 10, 2014, when the determination became final. However, in faxed correspondence dated April 24, 2014, taxpayer requested that its letter dated April 4, 2014, be accepted as an administrative protest based on its assertion that it had submitted a request for redetermination with supporting documentation in person on February 3, 2014, and had been under the impression that its appeal was under review. While a letter filed prior to the issuance of a NOD is not regarded as a timely petition for redetermination, we find that it was reasonable for taxpayer to assume that the documentation submitted four days prior to the issuance of the NOD was under review, and to fail to understand the need to submit an additional letter as a timely appeal. Thus, we find that there was reasonable cause for taxpayer's failure to timely pay or petition the NOD, and recommend that the finality penalty of \$302.40 be relieved.

Prok Electric Company