

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

395.0380

In the Matter of the Administrative)
Hearing on a Jeopardy Determination) DECISION AND RECOMMENDATION
)
L--- C--- S---, LTD) No. S- -- XX XXXXXX-010
)
)
_____Applicant.)

The above-entitled matter came on regularly for hearing in San Diego, California on Friday, July 31, 1981 before Robert H. Anderson, Hearing Officer.

Appearing for Petitioner:

F--- M. G---
Attorney at Law

W--- W---
Coordinator on Sub-contracts

Appearing for the Board:

Walter A. Shaffer
Principal Auditor
San Diego District

John E. Johnsen
Audit Supervisor
San Diego District

Sue Ellen Koll
Auditor
San Diego District

Summary and Conclusions

On June 9, 1981 L--- C--- S---, ltd., a California corporation, was issued a notice of Jeopardy Determination pursuant to Section 6536 of the California Revenue and Taxation Code.

The determination is for tax in the amount of \$20,178.06, interest to July 1, 1981 in the amount of \$2,017.07, and penalty for failure to file tax returns in the amount of \$2,017.81. The period covered by the determination is from 01-01-80 to 09-30-80 and the tax liability is measured by \$336,301 representing gross receipts from the sale of time shares in staterooms of a cruise ship.

L--- C--- S---, Ltd. was advised that it could petition for redetermination and request a hearing on the petition. The firm was also advised that to be timely a petition had to be filed within ten days of June 9, 1981 and a security deposit had to be filed with the Board equal to the amount of the determination.

No petition for redetermination was filed and no deposit was made. Instead, on June 26, 1981, P. B--- J---, President of L--- C--- S---, Ltd. filed an application for an administrative hearing pursuant to Section 6538.5 of the Revenue and Taxation Code. This was timely as the applicant has 30 days from the date of the notice of the Jeopardy Determination in which to file, and no security deposit is required for the application to be effective.

Mr. J--- alleged, in his application, as follows:

“...we do not believe that any determination whatsoever should have been found and that no state taxes are owed.”

He requested the administrative hearing for the following reasons:

1. To establish that the determination is excessive.
2. To establish that any liens that may or do exist, and any related action, should be delayed because such action would result in irreparable injury to L--- C--- S---, Ltd., and its related entities.
3. To request release of all liens.
4. To request a stay of collection activities.

As of the date of the administrative hearing, there were no liens filed by the Board of Equalization.

Section 6537 of the Revenue and Taxation Code provides as follows:

“If the amount specified in the (jeopardy) determination is not paid within 10 days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the 10 days, unless a petition for redetermination is filed within 10 days, and the delinquency penalty and the interest provided in Section 6591 shall attach to the amount of the tax or the amount of the tax required to be collected.

As noted above, to be effective, a petition for redetermination must be filed within 10 days of the date of the notice of jeopardy determination and a security equal to the amount of the determination must have been posted along with the petition. Inasmuch as this was not done, the matter became final on June 20, 1981. Accordingly, there is no reason to recommend a stay of collection activities.

Counsel for L--- C--- S---, Ltd. contends that the California Commissioner of Corporations has ruled that the firm is selling securities and it issued a cease and desist order against such sales on October 23, 1980.

Thus, it is argues that the transactions on which the tax has been assessed are not sales of tangible personal property. We disagree.

This matter involves the sale of ownership interests in a vessel named "R---".

Ownership of the R--- staterooms is sold on a time interval ownership basis complete with title of ownership. Staterooms are sold as time interval units of one (1) week duration which are designated as "Stateroom-Time period Units". The prices of units vary with the location and size of the stateroom and the time period of the unit. The time interval method of ownership affords the owner the use of his own ship during a specific time. (See Disclosure Statement, Preface. Copy is in the audit work papers.)

All of the facts and information set forth herein relating to the sales of ownership interests is taken from the Disclosure Statement, title document and a question and answer document supplied to prospective purchaser; some follow:

1. The R--- project has not been conceived as an investment program, and the R--- Association will not earn and there is no provision for it to obtain a profit.
2. All unit owners automatically become members of the "R--- Association," a nonprofit, incorporated association.
3. The R--- will be managed by a management agent which until early 1986 will be L--- C--- S---, Ltd. in accordance with the management agreement between the R--- Association and L--- C--- S---, Ltd.
4. L--- C--- S---, Ltd. is the seller of the ownership interests and is referred to as "grantor".
5. The operation of the R--- is paid for out of the R--- Association's income from owner assessments which are based upon forecasts of crew, food, maid and other operating costs. Monthly dues, similar to those paid by condominium time-share owners, are paid by stateroom time-share owners. Amounts vary depending on the stateroom that is owned.
6. Forty-nine (49) weeks of each year are owned as Stateroom Time Period Units. The remaining time of about three (3) weeks is designated as the "Service Unit". The grantor has retained the service unit and dedicated it to the R--- Association for use as periods of maintenance, time to ferry the ship to new C--- locations as may be decided by the association, or time to reschedule C--- periods lost due to certain unanticipated events.
7. Each time-share unit, except the service unit, is comprised of a particular stateroom and a particular time period of seven (7) days duration commencing at 12:00 o'clock noon on one day and ending on the same day of the following week before 12:00 o'clock noon.

8. Each owner may purchase one (1) or more units. Owners receive full title interest in their units, and a percentage of interest in all of the "common area" of the ship, which is all areas excluding the staterooms.

9. Each unit is priced differently according to size, location, configuration and the time period purchased. Title to each unit vests at the time full consideration is paid for the unit.

10. Each purchaser receives a certificate that serves as a title document and evidence of ownership. The first paragraph on the reverse side of the document reads:

"Upon payment or promise of payment in full of & _____ Grantor, L--- C--- S---, Ltd., does hereby grant this Title of Ownership to Grantee named on the reverse side hereof, the Stateroom, Time Period Unit described on the reverse side hereof."

11. L--- C--- S---, Ltd. retained legal counsel to research and render opinions about various matters related to the operation and plan of Interval Ownership of the R---; some of these are:

(1) Status of the R--- as a private motor yacht. Federal law precludes a foreign vessel from engaging in commerce including the carrying of passengers who contribute consideration for their passage, between ports or places in the United States, either directly or by way of a foreign port. The R--- is a private foreign vessel used exclusively for pleasure purposes carrying only its owners, their representatives and guests and crew and, as such is not subject to the aforementioned federal restrictions on a foreign vessel's movement between locations in the United States.

(2) R--- Stateroom – Time Period Units as Personal Property. The R--- is personal property or chattel and the Stateroom-Time Period Units comprising the R--- are an interest in personal property. As personal property, the units are not subject to the laws governing real property transactions.

(3) R--- Stateroom-Time Period Units are not securities and not within the purview of State or Federal Securities Laws or Regulations. The units offered under the R--- plan of interval ownership are not accompanied by rental or collateral services from which purchasers will realize economic benefits derived from the activities of persons other than the purchaser.

12. The R--- plan of interval ownership does not contemplate an investment type project, but does envision a group of owners enjoying the use, occupancy and pleasure of their stateroom on their ship at specific times of the year for many years into the future.

13. Many condominium projects have multiple owners of the same condominium. The concept of time sharing is not new, although it is unique to C--- ships. The R--- program has drawn upon the practices experienced in the real estate industry to develop an efficient, secure method of owning a stateroom for a period of time and a percentage of the common and restricted areas.

In summary, L--- C--- S---, Ltd. has been making sales of tangible personal property sufficient in number, scope and character to require that it hold a seller's permit and report sales tax on its retail sales.

Up to September 1980, there had been 102 sales of stateroom-common-restricted area interests in the cruise ship R---. During this time, the ship has been located in [city] Harbor. Title passed to the purchasers upon payment in full or promise of payment in full of the purchase price. The audited sale price of the time-share units ranged from \$1,900 to \$5,700 depending on the type of stateroom that was purchased. Section 6010.5 of the Revenue and Taxation Code relates to place of sale and provides: "For the purposes of this part, the place of the sale or purchase of tangible personal property is the place where the property is physically located at the time the act constituting the sale or purchase, as defined in this part, takes place." There have been 102 sales in [city] harbor up to September of 1980.

Counsel for L--- C--- S---, Ltd. stated that approximately 325 time-share units have been sold to date. This means that there has to be an updating of the audit since the measure is too low. The total number of time-share units to be sold is figured to be 735. (Forty-nine weeks times 15 cabins.) The determination is not excessive.

Recommendation

The determination issued June 9, 1981 is now final. No adjustment to the tax can be recommended. Penalty and interest should be added pursuant to Section 6591 of the Revenue and Taxation Code.

Inasmuch as there is evidence of additional sales of time-share units after the period covered under the jeopardy determination, there should be an audit of a period following the one covered by the jeopardy determination, and a new jeopardy determination issued for the subsequent period.

It is recommended that there be no stay of collection activities.

Robert H. Anderson, Hearing Officer

AUG 12, 1981

Date