

600.0430

December 2, 1974

This is in reply to your letter dated October 31, 1974, concerning the application of sales tax to sales of REDACTED TEXT nets.

We understand that REDACTED TEXT nets, like purse seine nets, are attached to the boat by means of a cable held by turns on a winch drum. The winch is used to pay out and take in the cables. The winch is secured to the deck and is a permanent part of the boat's structure. REDACTED TEXT nets, like purse seine nets, are not purchased ready to use. Rather they are made to order and are of a size dependent on the size and horsepower of the particular boat.

We took the position in our letter to you dated October 28, 1974, that a REDACTED TEXT net does not become an integral part of a commercial deep-sea fishing vessel, affixed or attached thereto in a substantial manner when in use, within the scope of this test as set forth in our Regulation 1595 "Watercraft" and that, accordingly, the exemption provided by Revenue and Taxation Code sections 6368 was inapplicable.

We have reconsidered our position at your request and are now of the opinion that sales of REDACTED TEXT nets for use in conjunction with commercial deep-sea operations are exempt from tax under the "Watercraft" exemption provided under section 6368.

Purse seine nets have been exempt from tax under section 6368. Based on similarity to purse seine nets, dragnets have been considered exempt from tax. The construction, attachment and use of REDACTED TEXT nets do not differ materially from purse seine nets or dragnets, and are therefore also considered to fall within the "Watercraft" exemption.

Note that the California sales tax is a tax upon the retailer, and not the consumer, of tangible personal property (Section 6051). The retailer is permitted to collect reimbursement for the tax from the consumer (Section 6052). In order to avoid payment of tax reimbursement, purchasers of REDACTED TEXT nets will have to provide their retailers with watercraft certifications. In order to obtain refunds on tax reimbursement paid in the past, certifications would have to be provided and the retailer will have to apply to the Board for a refund. There is no provision in the code for a consumer to apply directly to the Board for a refund.

If you have any further questions, please contact us again.

Very truly yours,

H. L. Cohen
Legal Counsel

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