



STATE BOARD OF EQUALIZATION

May 30, 1997

Dear

This responds to your facsimile transmittal dated March 26, 1997 to Supervising Tax Counsel David H. Levine regarding the purchase of a yacht by your client --- You ask whether the transaction qualifies as exempt from California sales or use tax pursuant to Regulation 1620(b)(3).

You describe the following factual situation. --- is purchasing a new vessel for approximately \$600,000 from the California manufacturer and seller (seller), --- Inc. --- has paid progress installments to the seller for work completed on the vessel. Under the terms of the contract of sale, --- will make final payment for the vessel after final inspection and delivery of the vessel at a point more than three nautical miles from California.

--- will take a separate transport vessel to meet the vessel for final inspection and approval. Seller will retain possession and control until the final inspection and approval by ---. After final inspection and approval, --- will give the final payment to the seller and the seller will give --- a bill of sale. Our understanding is that title will pass at that time.

After --- obtains possession and control of the vessel at a point more than three nautical miles from the California coast, --- will pleasure sail the vessel for the day and return the vessel to a California harbor. You indicate that thereafter the vessel will remain in this state for less than 90 days. While in California, it will be prepared for shipment via common carrier to Florida. You state that in Florida, the vessel will be reassembled and sailed in International waters to the Bahamas, and then to its final destination at a point in the Mediterranean Sea. For purposes of this opinion letter, we understand and assume that the vessel will be stored or used outside of California for one-half or more of the time during the six-month period immediately following its entry into this state after the final inspection, approval, and taking of possession and control by ---.

Discussion

A retail sale of tangible personal property in California is subject to sales tax measured by the retailer's gross receipts from the sale, unless specifically exempted or excluded by statute. (Rev. & Tax. Code §§ 6012, 6051.) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration is a sale. (Rev. & Tax. Code § 6006(a).) However, since there will be no transfer in California to --- of title to or possession of the vessel, the sale of the vessel to --- will not result in a California sales tax liability. (Rev. & Tax. Code § 6006; Reg. 1620(a)(1).)

In general, when sales tax does not apply, use tax measured by the sales price applies to the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6011, 6201, 6401.) Regulation 1620(b)(3), in pertinent part, explains when property is regarded as having been purchased for use in California:

"[P]roperty 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 be 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."

Thus, if the vessel is first functionally used in California, use tax applies. "Functional use" means the use for which the vessel was designed. The first functional use of the vessel after its transfer to --- will occur outside of California when it is used for pleasure sailing. However, since the vessel will re-enter California within 90 days of its completed delivery and purchase, it will be presumed to have been purchased for use in California.

As explained in Regulation 1620, this presumption can be overcome for the vessel if the purchaser establishes that for the period of six months after its entry into California, it is used principally outside California. Since during the six-month period immediately following the vessel's entry into this state after its purchase by --- it will be used or stored outside of California one-half or more of the time, the vessel will not be considered purchased for use in California, and will not be subject to use tax. (Reg. 1620(b)(3).)

I hope this information is of assistance. Please write again if we may answer any further questions.

Sincerely,

Sharon Jarvis
Senior Tax Counsel

SJ:cl

cc: District Administrator