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June 17, 1996

Mr. B--- P. D---
F--- B--- & M---
--- Building, XXth Floor
XXX --- Street
--- ---, CA XXXXX

Re: T--- F. W---

E. L. Sorensen, Jr.
Executive Director

Dear Mr. D---:

This is in response to your letter dated March 27, 1996, asking whether an assignment of a vessel from a G--- corporation to a Delaware corporation is subject to tax. You provide the following factual background:

“Mr. W---e is currently the sole shareholder of a G--- corporation. This corporation’s sole asset is a vessel, currently under British registry. There is no debt associated with this vessel.

“The vessel has since its purchase several years ago been located outside the United States in Europe and the Caribbean. Mr. W--- would now like to bring this vessel to California, and the use of a G--- corporation is no longer advisable. Thus, Mr. W--- will form a new Delaware corporation of which he will be the sole shareholder.

“The G--- corporation will then assign title to the vessel for no consideration to the Delaware corporation. The Delaware corporation’s only asset will be the vessel. As part of this proposed transfer, the vessel’s registry will be changed to California.”

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt by statute. (Rev. & Tax. Code § 6051.) 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 the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.) The term

“purchase” means any transfer of title or possession of tangible personal property for a consideration. (Rev. & Tax. Code § 6010.)

Revenue and Taxation Code section 6283 provides that the sale of a vessel, as defined by Sales and Use Tax Regulation 1610(a)(2), is exempt from sales tax if the vessel is sold by a person who is not required to hold a seller’s permit. Instead, the applicable tax is the use tax owed by the purchaser measured by the sales price of the vessel purchased for use in California. (Reg. 1610(b)(1)(C).)

We assume that the assignment of the vessel from the G--- corporation to the Delaware corporation will occur outside of California. We further assume that any stock issued by the Delaware corporation is first issue stock and that the assignment of the vessel from the G--- corporation to the Delaware corporation will be solely in exchange for the first issue stock of the commencing Delaware corporation, with no other consideration (such as any assumption of liabilities). Under these facts, such a transfer is not a purchase subject to use tax. (See BTLG Annot. 395.1970 (7/27/92).)

If you have any further questions, please feel free to write again.

Sincerely,

Sophia H. Chung
Tax Counsel

SHC:rz

cc: --- --- District Administrator (--)