

**STATE BOARD OF EQUALIZATION**

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August 28, 1991

D--- I. N---
Assistant Vice-President

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Consumer Loan Center
Box XXXX
---, CA XXXXX

Re: Taxable Effect of Bankruptcy Abandonment/Divorce

Dear Mr. N---:

This is in response to your letter of June 13, 1991, requesting our opinion as to whether use tax applies in the event of the bankruptcy abandonment and divorce of various co-owners of a boat. In our opinion, these events constitute two separate transactions, each of which we will discuss in turn.

Facts and Assumptions

You described the facts in this matter as follows:

“The bank is reviewing a request to refinance an existing boat loan for balance only; no monies will be disbursed in the transaction. When originally funded in 1980, the boat was registered in the name of a partnership comprised of four partners; two married couples. In 1987 two of the partners (one couple) [‘Couple A’] abandoned their interest in the partnership due to a bankruptcy filing. Of the remaining two partners (one couple) [‘Couple B’], a divorce awarded as ‘his sole and separate property’ interest in the partnership thus leaving only on party remaining of the original four parties.

“It is the intent of the Bank and remaining borrower to refinance the balance only and to re-register the boat into his name alone since he is the only remaining interested partner in the asset following the aforementioned partners abandoned interest. In light of this abandoned interest, it would appear that there is no ‘consideration’ being given to the abandoned parties in our electing to refinance and register in his name alone. As such, it would appear that use tax need not be collected.”

For the purposes of this opinion, we assume that: the Bank has a perfected security interest in the boat; there are no other liens or security interests in the boat; Couple A and the bankruptcy trustee or debtor-in-possession properly abandoned all interests in the boat partnership; the bankruptcy court approved the abandonment by the bankruptcy trustee or debtor-in-possession; Couple A has received a discharge in bankruptcy; all four of the original co-owners are California residents; all four of the original co-owners were jointly and severally liable for the entire boat debt; and the boat is located and used in California.

Section 6596 Non-Reliance Disclosure

Please note that this response is not one upon which your client may rely within the provisions of California Revenue and Taxation Code Section 6596 because your client is not identified. Rather, this is an opinion regarding a set of hypothetical facts.

Sales and Use Tax – General Discussion

Except to the extent specifically excluded or exempted by statute, the Sales and Use Tax Law, California Revenue and Taxation Code (Section 6001 et seq.) imposes an excise tax in connection with the retail sale of all tangible personal property sold or purchased for use in this state. (All statutory citations are to the California Revenue and Taxation Code, unless otherwise noted herein.) To the extent there is a tax in connection with the above-described facts, it would be a use tax pursuant to Section 6201, which imposes tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. Section 6010(a) defines a “purchase” as “...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...” [Emphasis added].

Bankruptcy Abandonment

When Couple A and the bankruptcy estate abandoned their interests in the boat partnership, Couple B succeeded to their interests, becoming sole owners of the partnership. As the bank’s security interest was properly perfected, the debt was unimpaired and Couple B effectively acquired Couple A’s interest subject to the Bank’s debt. Couple A was relieved of their portion of the overall boat-debt by virtue of their discharge in bankruptcy. This relief of debt occurred by operation of law, irrespective of any formal assumption of debt by Couple B. In fact, as Couple B was already jointly and severally liable for the entire debt, there was no increase in their legal liability by virtue of their acquisition of Couple A’s interest. As there is not consideration in a transfer by operation of law, there is no purchase pursuant to Section 6010(a). Without a purchase, there can be no use tax liability. Accordingly, in our opinion, the bankruptcy abandonment by Couple A is not subject to use tax.

Divorce

When Couple B divorce and all interests in the boat were awarded to the husband, the bank's security interest was once again unimpaired and the husband effectively acquired the wife's interest in the boat partnership subject to the Bank's debt. We assume this was accomplished through the divorce property settlement as a division of community property such that the husband was awarded all of the equity in the boat and the wife was awarded other community assets of equivalent value. Accordingly, we assume that the husband retained the entire boat liability and the wife retained other community debts of equivalent value. The effect of this is similar to the bankruptcy abandonment discussed above. This relief of debt occurred by operation of law as part of the division of community assets and debts. Once again, we conclude that there is no consideration in a transfer by operation of law and without consideration, there is no purchase pursuant to Section 6010(a) and without a purchase, there can be no use tax liability. Accordingly, in our opinion, the divorce property settlement award of the boat to the husband is not subject to use tax.

Please note that the husband is advised to retain for his records documentary evidence to substantiate the occurrence of the bankruptcy abandonment, as well as the divorce and resulting property settlement.

If you have any further questions, please do not hesitate to write to us again.

Cordially,

Victoria Lani Arena
Tax Counsel

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