

May 13, 1968

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Gentlemen:

Reference is made to your petition for redetermination relating to the above-mentioned account with respect to tax assessed on the construction of "Barge 21" at --- --- in Los Angeles, California. The protested determination consists of tax in the sum of \$13,371.20 for the period from October 1, 1965 to December 31, 1965, and of interest in the sum of \$1,738.26, to and including March 31, 1968.

We understand that in 1965 --- --- (---) built and sold a "barge" (a clamshell dredge) to you for the sum of \$334,280. Tax was charged on the original sales invoice. Sometime thereafter you gave --- a watercraft exemption certificate covering the "barge". --- then canceled the sales tax portion of its billing to you but secured a reimbursement agreement from you to the effect that you would satisfy any sales tax liability which might result from the sale of the "barge".

This transaction was included in the additional taxable measure recommended by an audit of --- for periods through June 1967. The resultant determination was paid in full by --- in October 1967. No petition or claim for refund was ever filed by ---. On December 13, 1967, we received your letter stating that tax on this transaction should be refunded to --- and a determination should be made against you so that you could protest payment of the tax. Pursuant to your request, a refund was made to --- and a notice of determination was issued to you.

Your petition for redetermination dated March 18, 1968, was received March 19, 1968. In your petition you refer to the fact that the watercraft exemption has been predicated on the first two full quarters of use after service has begun and then describe the use of the "barge" during its first two quarters.

April 1, 1966 – April 1, 1966 – Barge doing work for --- --- of San Francisco in nonexempt category, 15 work days.

April 22, 1966 – May 14, 1966 – Repairs, 23 days.

May 15, 1966 – Barge loaded cargo and departed for Alaska. It did not return to California for the balance of the second quarter nor for any of the third quarter. Barge doing work in exempt category of interstate commerce.

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While it is true that the first two complete calendar quarters in which a watercraft is used after its purchase are considered as the test period to determine the principal use of watercraft, and hence, whether the exemption is available, section 6368 provides in part:

“There are exempted from the taxes imposed by this part, the gross receipts from the sale of and the storage, use, or other consumption in this State, of watercraft for use in interstate or foreign commerce involving the transportation of property or persons for hire...”

Thus, the sale of a watercraft, to qualify for the exemption provided by section 6368, must be for use in interstate or foreign commerce involving the transportation of property or persons for hire. The sale of a watercraft that is subsequently used in interstate commerce by the purchaser does not qualify for the exemption. From the information we have, “Barge 21” was not used in interstate commerce involving the transportation of property or person’s for hire during the first two complete calendar quarters after its purchase. Therefore, the use of “Barge 21” does not qualify for the watercraft exemption provided by Section 6368.

In addition, the auditor was of the opinion that “Barge 21” was a “dredge” rather than a “barge,” that it was unsuitable for hauling (transporting) property, and that this “dredge” was not a watercraft within the meaning of section 6368. The basis for this opinion was that “Barge 21” was first used in California for pulling pilings, a function of a dredge, and that the transaction was initially treated by --- as a sale of any of its dredges would have been. ---’s practice was to charge tax on sales of all dredges, and tax was in fact charged on the original sales invoice. Subsequently, you requested that the vessel be described as a “barge” and offered an exemption certificate to ---. The exemption certificate did not seem to have been taken in good faith, however, as ---, before crediting the tax, secured an agreement from you that tax would be paid by you if --- were held liable for the tax.

In view of the above, we would recommend that the measure of tax for this sale be redetermined without adjustment.

Very truly yours,

J. Kenneth McManigal
Assistant Tax Counsel

JKM:smk

bc: Los Angeles Dist. – Dist. Admin.
Long Beach – Subdist. Admin.