STATE BOARD OF EQUALIZATION

February 26, 1954

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Attention: --- --- ---

Re: --- --- ---

Gentlemen:

We have considered the information presented by you in connection with the determination levied upon the above-named taxpayer. Our conclusions are as follows:

As to the --- --- ---

It is our understanding that this vessel was purchased by the taxpayer from the --- --- --- on March 20, 1946, as surplus property. Delivery was made to taxpayer at New York City, New York, on March 20, 1946, and the vessel was then brought to San Diego under its own power, carrying no cargo. After arrival in California, this vessel underwent certain minor repairs and alterations to the engines and pumps. In 1946, taxpayer used the vessel to carry petroleum products between San Pedro and San Diego. In 1947 it made three trips carrying cargo consigned from San Pedro to ports in Mexico. Portions of the course followed by the vessel in the trips from San Pedro to San Diego and from San Diego to Mexico were on the high seas.

Pursuant to Section 6402, the purchase price of this vessel was set up as taxable under the California use tax on the grounds that it was purchased for storage, use, or other consumption in this State.

It is your contention that the application of the use tax to this vessel will violate Article 1, Section 8, clause 3, of the United States Constitution which gives to the Congress the power "To regulate commerce with foreign nations, and among the several States, and with the Indian Tribes". You cite a number of cases to point out that transportation which begins in a state and terminates in the same state but where a part of the journey is outside that state, is interstate or

foreign commerce. These cases all have to do with the power of Congress to regulate such transportation. However, as pointed out in Cornell Steamship Company v. United States, 53 F. Supp. 349 at 355, affirmed 321 U.S. 634, the criteria employed in determining whether a state may tax a carrier are not the same as the criteria used to determine whether the Federal Government may regulate the carrier under commerce clause.

An excellent example of this is shown in two cases involving Cornell Steamship Company. The first of these cases New York ex rel Cornell Steamship Company v. Sohmer, 235 US 549, upheld the power of the State of New York to levy a franchise tax on transportation corporations measured by receipts from transportation from a point in New York to a point in New York but not including transportation in interstate commerce. The Cornell Steamship Company operated a tugboat between ports in New York, but in traveling between some of the New York ports passed over New Jersey waters. In affirming the power of New York to levy the tax on receipts from such trips, the Supreme Court stated "But transportation between ports of the state is not interstate commerce, excluded from the taxing power of the state, because as to a part of the journey the course is over the territory of another state". The second case, Cornell Steamship Company v. United States 53 F. Supp. 349, affirmed 321 US 634, upheld the power of the Interstate Commerce Commission to regulate the rates of the Cornell Steamship Company where its activities were the same as those considered in the first case.

We think these cases clearly show the power of the State of California to levy a use tax with respect to the --- --- ---. Other cases holding the power of a state to tax vessels even though traveling in part on the waters of another state or on the high seas are Southern Pacific Company v. Kentucky, 222 US 63 and Ott v. Mississippi Valley Barge Line, 336 US 169.

Even apart from the above cases, we think that there was sufficient local use of the vessel to warrant imposition of the tax under the reasoning of Southern Pacific Co. V. Gallagher, 306 U.S. 167.

As to the --- --- ---

This barge was built in Decatur, Alabama, delivered to taxpayer on September 30, 1949, and towed to San Diego arriving November 21, 1949. (After arrival in San Diego some work was performed on its pumps but there were no structural changes.) This barge has been used to haul petroleum products between San Pedro and San Diego, California. Portions of its course have been on the high seas.

We think this barge is not exempt from use tax under the commerce clause of the United States Constitution for the reasons set out above and, therefore, is subject to tax unless exempt under Section 6368 of the Sales and Use Tax Law. That section exempts from sales and use tax watercraft for use in interstate or foreign commerce involving the transportation of property or persons for hire or for use in commercial deep sea fishing operations outside the territorial waters of this State.

It is your contention that the term "interstate or foreign commerce" as used in Section 6368 includes transportation between tow points in the State of California where a portion of the journey is on the high seas.

We think that the term "interstate or foreign commerce" as used in that section means transportation between a point in this state and a point outside this state.

The transportation here involved is no more interstate or foreign commerce than the transportation in the first Cornell Steamship Company case was interstate within the meaning of the New York franchise tax.

The transportation here involved was essentially local even though the barge travels on the high seas much the same as was the transportation in Wilmington v. California Railroad Commission, 236 U.S. 151, 59 L. Ed. 508, where it was held, in the absence of Federal regulation, California Railroad Commission had the power to regulate rates on transportation between San Pedro and Avalon on Catalina Island even though some twenty miles of the voyage was on the high seas.

Accordingly, we shall recommend to the Board that the tax be redetermined as set forth in the audit. If you desire a hearing before the Board, we will set the matter for such hearing at your request.

Very truly yours,

John H. Murray
Associate Tax Counsel

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