

**STATE BOARD OF EQUALIZATION**

(916) 445-6493

March 3, 1955

Attention: Mr. [E]
President

Gentlemen:

With your letter of January 28 you enclosed a memorandum listing nine types of operations involving watercraft which you contend are such that the watercraft and the component parts thereof are entitled to the exemption provided by Section 6368 of the Sales and Use Tax Law.

We have gone over these operations as described in your memorandum with Assistant Attorney General James E. Sabine and Deputies Attorney General Ernest P. Goodman and Sho Sato. The conclusions reached at this conference are indicated below following a repetition of the operations as described in your memorandum:

1. Water-taxi used in transportation of pilots, longshoremen and ship crews from a point on shore to a vessel engaged in interstate or foreign commerce while operating on navigable water or vice-versa.

Watercraft used for these purposes are not used in interstate or foreign commerce and are not, therefore, within the exempt category except in the case of watercraft transporting so-called harbor pilots to or from vessels, these pilots actually navigating or aiding in the navigation of the vessels in the completion or commencement of their voyages to or from a point outside this State.

2. Tugboats engaged in towing or assisting vessels principally used for the transportation of passengers or cargoes in interstate or foreign commerce.

This use, if in aid of the actual movement of vessels carrying cargo or passengers, qualifies the tugboats for the exemption.

3. Tugboats and barges engaged in the delivery of bunker fuel to vessels principally used for the transportation of passengers or cargoes in interstate or foreign commerce.

This use does not qualify the tugboats and barges for the exemption. The delivery of bunker fuel from a point in this State to vessels in this State is not a use in interstate or foreign commerce even if the vessels are engaged in interstate or foreign commerce.

4. Tugboats and barges engaged in transporting cargoes moving in interstate or foreign commerce.

This use qualifies the tugboats and barges for the exemption.

5. Tugboats and barges engaged in the delivery of ship stores to vessels principally used for the transportation of passengers or cargoes in interstate or foreign commerce.

This use does not qualify the tugboats and barges for the exemption. As in the case of bunker fuel, the delivery of ships stores from a point in this State to vessels in this State is not a use in interstate or foreign commerce.

6. All lifting, handling, assisting, loading and unloading cargo or property to or from vessels in interstate or foreign commerce.

This is a use qualifying the watercraft for exemption to the extent that the property involved constitutes cargo. If the property carried is other than cargo, e.g., fuel, ships stores, etc., the transportation of such property other than cargo is not a use in interstate or foreign commerce.

7. All testing of booms, davits, lifeboats or other services rendered to certificate or otherwise assist vessels in interstate or foreign commerce to conform to maritime regulations.

This is not an exempt use of the watercraft, as it does not involve transportation in interstate or foreign commerce.

8. All aid, assistance or salvage of distressed, stranded or sunken vessels in interstate or foreign commerce or commercial deep sea fishing boats.

To the extent that watercraft are used in aiding a vessel to continue its movement to a point in this State from a point outside this State or vice-versa, or the cargo of such a vessel, the use is an exempt use in interstate or foreign commerce.

9. All services rendered to vessels in interstate or foreign commerce at dockside or in the stream, such as:

- (1) Remove or replace and/or handle radar mast and antenna.
- (2) Remove or replace and/or handle deck gear and equipment.
- (3) Remove or replace and/or handle tail shafts, propellers and rudders.
- (4) Remove, replace and/or handle any and all engine room equipment and machinery.

None of these services constitute a use in interstate or foreign commerce of watercraft transporting the workers or materials to or from the vessels.

You will note that the basic distinction running through all of the above answers is whether or not the use is in the transportation of either the vessel or its cargo or passengers in interstate or foreign commerce. The transportation of fuel, ships stores, repair parts, and the like, to and from vessels is not a use in interstate or foreign commerce. We believe that these distinctions between what is considered a use in interstate and foreign commerce and a use other than in interstate or foreign commerce are in accordance with the law as determined by decisions of both Federal and State Courts.

At the same conference we discussed your suggestions for using two quarterly reporting periods as a proper test period for determining whether a particular watercraft is principally used in interstate or foreign commerce or is principally used in intrastate commerce. The conclusion was reached that this is an adequate test period, subject to the limitations set forth in the statement which I furnished you at the time of our conference here on December 23, 1954. We believe that the period of two quarters should be the first two quarters of actual use of the vessel following its purchase or, in the case of component parts purchased for vessels that have already been in service, the two last quarters of actual use of the vessels immediately preceding their being taken out of service for repairs.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph

cc: --- --- - Tax Administrator