

M e m o r a n d u m**335.0045.300**

To: Out of State – Auditing

Date: November 20, 1979

From: HQ – Legal (LS)

Subject:

This is written in response to your memorandum of October 26, 1979 concerning the subject taxpayer. That memorandum and the brochure attached to it indicate that the taxpayer manufactures and then leases certain self-propelled floating platforms which it calls cruisers. The cruisers are apparently manufactured at the taxpayer's --- --- --- factory. Each cruiser is built on two 40 foot reinforced aluminum pontoons connected by 30 beams of steel which in turn support a one inch thick epoxy-clad deck. Total deck space is 494 square feet. Each five ton cruiser provides a total displacement of 32,000 pounds; is powered by an 80 horsepower outboard marine engine; contains a 40 gallon capacity gasoline tank, and two 100 gallon tanks one of which is used for fresh water and the other for sewage.

The cruisers are leased to customers who wish to vacation on various lakes throughout the country as well as in California's Delta Region located northeast of San Francisco. The customer provides a camper, trailer, drive away motor home, or other recreational vehicle which the taxpayer then attaches firmly to the cruiser platform with heavy chains. The cruiser is then lowered into the water ready for travel. The taxpayer's sole rental facility in California is located --- --- ---.

Your memorandum asked whether these cruisers should be treated as mobile transportation equipment for sales and use tax purposes.

In our opinion the cruisers are not mobile transportation equipment. In order to qualify as such under Revenue and Taxation Code Section 6023, Regulation 1661, and our annotation legal opinions, it would have to qualify as a "ship" and be designed to carry persons or property substantial distances. The cruisers in question appear to fit our prior interpretation of the term "ship" due to their length and their net tonnage (see Annotation 335.0040 and 335.0050). However, they do not appear to be designed to carry persons or property substantial distances as

required by Regulation 1661 (b) (1). This conclusion is based both on the relatively small fuel capacity of the cruiser and the typically confined areas of usage. In our opinion the cruisers utilized in the taxpayer's business should be treated as we treat pilot boats, tug boats, and house boats. That is to say, they should not be regarded as mobile transportation equipment.

We have reviewed the taxpayer's returns in our files and it appears that he is currently reporting and paying tax measured by rental receipts. Based on our conclusion with respect to the nature of the cruisers, it would appear that he is using the proper method of reporting the tax.

We hope this has answered your questions. If it has not, or if you would like to discuss the matter further, please call.

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