

560.0245

Memorandum

To: Mr. John A. Montoya
Refunds Section – MIC:39

Date: September 29, 1993

From: Thomas Cooke – Tax Counsel
Legal Division – MIC: 82

Subject: Tax on Sale of Forfeited Vessel

In your memorandum dated September 21, 1993, you requested an opinion on whether the taxpayer should be granted a refund of use tax collected by DMV on a vessel.

The taxpayer purchased the vessel at a federal forfeiture sale. The taxpayer has submitted documentation indicating that the vessel had been seized by the U.S. Customs and forfeited to the United States of America.

19 U.S.C. Section 1609 provides that the U.S. Customs Service shall declare seized property forfeited. Title to the property is deemed to vest in the United States "from the date of the act for which the forfeiture was incurred."

17 U.S.C. Section 2071 states that the U.S. Customs Service shall be a "service" within the Department of the Treasury.

Revenue and Taxation Code section 6402 provides a use tax exemption for property "purchased from any unincorporated agency or instrumentality of the United States, except (a) any property reported to the Surplus Property Board of the United States, or to any agency succeeding to the functions of that Board, as surplus property by any owning agency and (b) any property included in any contractor inventor."

It is our opinion that any sale by the U.S. Customs Service of property that was seized, forfeited to the United States and sold at auction will be exempt from use tax under the provisions of Revenue and Taxation Code section 6402. The U.S. Customs Service is an "unincorporated agency or instrumentality" of the United States and neither of the exceptions stated in Revenue and Taxation Code section 6402 are applicable. It is our recommendation that the refund claim be granted.

Thomas Cooke

TJC:plh

Cc: Mr. Gordon Adelman – MIC:82