



**STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)**

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June 22, 1994

BURTON W. OLIVER
Executive Director

Mr. D--- A---
Vice President, N--- E---, Inc.
XXX --- --- Drive, Suite XXX
--- ---, California XXXXX

Re: SY --H XX-XXXXXX
Documented Vessel
Application of District Tax

Dear Mr. A---:

As he mentioned in his letter to you dated May 16, 1994, Mr. Jim Levinson of the office of Board Member Ernest J. Dronenburg, Jr., has asked me to review the opinion he expressed therein as to the application of district taxes to your company's sales of documented, as opposed to undocumented, vessels. Mr. Levinson was of the opinion that the rules applicable to the sale of tangible personal property in general apply to such sales.

Mr. Levinson was answering your letter to him dated April 29, 1994. One of N--- E---' divisions, ---&--- Yacht Sales, apparently in the business of selling both documented and undocumented vessels, has sales offices in both --- --- (San Diego County) and --- --- (Orange County). You ask how to apply district taxes to sales of documented vessels. There seems to be no question as to the proper taxation of undocumented vessels. (See, Reg. 1823.5.) You wrote to Mr. Levinson again on June 1, 1994, pointing out an error in his response to you. You also asked about ---&---' liability for tax on out-of-state sales and about any paperwork or documentation which H&S should retain on such sales. In you April 29 letter you give three examples of sales:

- "1. One individual resides in Riverside County drives to San Diego and takes delivery of his boat from us in San Diego. He then rents a slip in Newport Beach. The boat is documented in the Port of Long Beach. How do we handle?

"2. A San Diego resident buys the boat from our San Diego office and takes delivery in Newport. Boat comes back to Newport?"

"3. A San Diego resident buys the boat from our Newport store and brings it to San Diego."

I am unsure what you mean by the phrase in Example 2 "Boat comes back to Newport?" and that in Example 3 "brings it back to San Diego." I assume by the former you mean that the buyer takes delivery in Newport Beach and berths the boat there. I assume by the latter you mean that he takes delivery of the boat in Newport Beach and sails or ships it to San Diego.

OPINION

A. Transactions and Use Taxes Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) Many counties, including both San Diego and Orange, impose transactions and use ("district") taxes on top of the statewide tax rate of 7.25%. The taxes are administered by the Board pursuant to Sections 7251-7279.6.

Section 7261(f) exempts from the transactions tax imposed on retailers, but not the use tax imposed on purchasers, sales of property to be used outside the district where the retailer ships to a point outside its district pursuant to its contract of sale with the purchaser. (§ 7262(a)(1), interpreted and implemented by Regulation 1823(a)(2).) If the purchaser resides in a district, whether a retailer not located in a district (or located in a different district than the purchaser) is obligated to collect from the purchaser district use tax depends upon whether the retailer is "engaged in business" in the purchaser's district, as defined in Regulation 1827. In summary, Regulation 1827(b)(1) and (c) provide that where a retailer has a place of business in a district, then the retailer is obligated to collect that district's use tax from the purchaser if it ships or delivers the property into the district, or participates in the district in making the sale.

As you know, in the case of undocumented vessels, the rules change somewhat. Vehicle Code Section 9840(g) defines an "undocumented vessel" as "any vessel which is not required to have and does not have a valid marine document issued by the Bureau of Customs of the United States or any federal agency successor thereto." Section 7261(f) provides that delivery of an undocumented vessel outside of a district is satisfied by registration to an out-of-district address and by a declaration under penalty of perjury, signed by the buyer, that such address is in fact his principal place of residence. Section 7262(a)(2) provides that a "retailer engaged in business in

the district" for the purpose of collecting district use tax includes any retailer of an undocumented vessel registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. (See, Reg. 1823.5.) Thus, an undocumented vessel is deemed delivered outside the seller's district if the buyer registers or licenses it outside such district and completes the required affidavit; the seller is deemed to be engaged in business (for the purpose of collecting district use tax) in any district in which the vessel is licensed or registered and so must collect the use tax of such district on the sale. (Reg. 1823(a) & 1823.5(a) & (b).)

The paragraphs in Section 7261(f) relating to undocumented vessels were added by Statutes 1970, Chapter 1115, Section 1, operative January 1, 1971. In Section 2, the Legislature declared as follows:

"The Legislature finds and declares that because of the small geographic area covered by the transactions tax, the low rate, and the temporary nature of the tax, and the difficult administrative problems which arise when exempting deliveries of tangible personal property within a sales and use tax jurisdiction, *the provisions of the act* relating to delivery of certain commodities outside the area covered by the tax *shall apply only to vehicles, planes, and boats licensed or registered by the state....*" (Italics added.)

B. Tax Consequences to [---&--- Yacht Sales.

We thus confirm Mr. Levinson's conclusions. The highlighted provisions of Chapter 1115 demonstrate that the rules regarding the application of district tax set forth in Regulation 1823.5 were intended to be applied only to undocumented vessels. Sales of documented vessels are evaluated for district tax consequences just as are the sales of any other item of tangible personal property. Therefore, the rule is that where a documented vessel is sold in a district, and the seller ships or delivers it out of that district pursuant to the contract of sale, the transactions tax of the seller's district does not apply to the sale. (Reg. 1823(a)(2)(B).) If the purchaser resides in a district, the use tax of that district does apply, and the retailer must collect it if engaged in business in the purchaser's district. (Reg. 1823(b)(1)(C); Reg. 1827(a).)

Turning now to the scenarios you posit, as a general point, ---&--- is engaged in business in both Orange and San Diego counties because it has offices there. For that reason, the transactions tax of the district in which the office is located applies to any sale where the purchaser takes delivery of the boat at the sales office. In Example 1., the San Diego County Regional Transportation Commission (SDTC) transactions tax would apply, making the total rate 7.75%. At this time, though it would report tax at the full rate, ---&--- would pay tax and collect reimbursement at the rate of 7.00% because of the 0.75% tax credit in effect in San Diego County under SB 263. In Example 2., the Orange County Local Transportation Authority (OCTA) transactions tax would apply, making the total rate 7.75%. In your last example, the OCTA transactions tax would still apply as the buyer picks up the boat at the Newport Beach

office even though he takes it out of the district. By comparison, were these undocumented vessels, ---&--- would collect the use tax of Los Angeles County in Example 1. and that of San Diego County in Example 3.- i.e., where the vessels were to be licensed or registered.

We also agree with Mr. Levinson's conclusions regarding out-of-state sales. If, pursuant to the contract of sale, the vessel is required to be, and is, shipped or delivered out-of-state, either by ---&---' own facilities or by common carrier (whether hired by ---&--- or the purchaser), tax does not apply to the sale. (Reg. 1620(a)(3)(A).) As to documentation, you should retain a copy of the sales agreement specifying out-of-state delivery and passage of title. If using a common carrier, retain any shipping documents that you receive. If using your own facilities, retain any documents that would show out-of-state, delivery, like gas and hotel receipts, bills for food at the out-of-state location, a statement of delivery notarized there, and any bill you receive from the person making the delivery if not your own employee. If you export the vessel to Mexico, you must retain a bill of lading or import documents of Mexico or other evidence of delivery to a carrier, customs broker, or other person engaged in the business of preparing the boat for export.

For your information, I have included copies of Board of Equalization Pamphlet No. 44, "District Taxes," and Regulations 1823 and 1827. I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:es

Enclosures: Pamphlet No. 44
Regs. 1823 & 1827

cc: Mr. Jim Levinson (MIC:77)
Mr. Glenn A. Bystrom (MIC:43)
Mr. Gary J. Jugum