



560.0180

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

September 4, 1953

Attention: REDACTED TEXT
Federal and State Taxes

Gentlemen:

Our letter to the Navy Department has been answered and we have received a further reply from Mr. REDACTED TEXT, Acting General Counsel of the Maritime Administration. We are enclosing copies thereof.

It will be the staff's recommendation that the use tax applies to the use of the [VESSEL] for the following reasons.

As indicated by the enclosures and the other letter from the Department of Commerce which we referred to on July 1, it appears that this tanker was declared surplus property in October 1947 by the Navy Department, as "owning agency," to the Maritime Commission, as "disposal agency" as required under section 11(b) of the Surplus Property Act of 1944 (1944 U.S. Code Cong. Service 764, at 768).

Therefore, the sale to you was not a "nonreportable" scrap sale by an "owning agency" under section 14 of the Act but a sale of surplus property by the Maritime Commission under its statutory duty to act as "disposal agency" with respect to such property under section 10(b) of the Act, which duty required the Commission to dispose of said property in accordance with the provisions of the 1936 Merchant Marine Act. The sale was made under the conditions outlined in section 5 of the Merchant Marine Act of 1920 (46 USCA 864) since that section actually became a part of the Merchant Marine Act of 1936 by the incorporation provided for in 46 USCA 1114.

We are further of the opinion that this property was also reported to the War Assets Administration, or was at least required to be so reported. If the requirement existed, we believe the tax should apply under section 6402 of the California Sales and Use Tax Law. It was "property" as defined in section 3(d) of the Surplus Property Act. It was "surplus property" as defined in sections 3(e) and 11, and, pursuant to section 11, it had to be reported to the Surplus Property Board as well as to the "disposal agency". As you know, the War Assets Administration succeeded to the functions of the Surplus Property Board. See the historical note in 50 USCA App. 1614(a).

Even if a practice grew up in the Federal Government only to actually require a declaration of surplus to the "disposal agency", we do not believe that such practice should render section 6402 inapplicable where, pursuant to the provisions of the Surplus Property Act, the property in question was "surplus property", as defined therein, declared as such to the appropriate "disposal agency", and disposed as such.

Regulation One of the War Assets Administration, in effect in October 1947 when the Navy Department declared this property surplus also, we believe, supports our position. That regulation, of March 1947, 12 Fed. Reg. 2249, as amended on July 25, 1947, in 12 Fed. Reg. 4962, provided in part:

"8301.6 Declaration of surplus property, (a) Owning agencies. Each owning agency shall, pursuant to section 11(a) of the [Surplus Property] act, continuously survey property in its control and determine that which is surplus to its needs and responsibilities, and, except for such property as the owning agency is authorized to dispose of, it shall report such property to the [War Assets] Administrator and to the appropriate disposal agency designated in this part. The reporting of surplus personal property by an owning agency to a disposal agency shall constitute a declaration of surplus...

"(b) Disposals under other laws; Section 34(a) of the Act. Pursuant to the provisions of Section 34(a) of the act, a Government agency having authority under another law to dispose of designated surplus property may exercise such authority without declaring the property surplus where the Administrator has not prescribed regulations to govern the disposition so as to bring it within the provisions of the Surplus Property Act.

"8301.7. Declaration of surplus personal property; forms, description of property. Subject to the provisions of Part 8301.9, owning agencies shall declare surplus personal property to the Administrator and to the appropriate disposal agencies on forms as prescribed by Order 3 of this part..." (Underscoring added.)

Part 8301.9 merely dealt with the declaration of surplus real property.

Therefore, it appears that the property had to be reported to the War Assets Administrator as well as to the disposal agency. We understand that Part 8301.6(b) merely referred to the authority of owning agencies to dispose of property without declaring it surplus where they have such authority under the law. Obviously, the Navy had no such authority to dispose of the [VESSEL]. In fact, the tanker was declared as surplus by the Navy since, under Part 8301.6(a) "the reporting of surplus personal property by an owning agency to a disposing agency shall constitute a declaration of surplus".

For the above reasons, we believe the tax applies. We shall, accordingly, recommend to the Board that the petition be denied. In the event you desire to appear before the Board to show cause why the petition should be granted, please so inform us.

Yours very truly,

W. W. Mangels
Assistant Counsel

WWM:ja

cc: San Francisco - Auditing