

560.0260

Memorandum

To: REDACTED TEXT

Date: December 2, 1965

From: Robert H. Anderson

Subject: Sale of a Yacht by a U. S. Marshal

The admiralty case (REDACTED TEXT) involved the sale of a libeled yacht.

The sale was ordered by the U.S. District Court for the Northern District of California, Southern Division.

The sale was made by the U.S. Marshal and the purchaser, REDACTED TEXT, is claiming an exemption from use tax under Section 6402 of the Sales and Use Tax Law. The basis of his claim is that the Marshal is an officer of the Federal Court and as such is an instrumentality of the U.S. Government.

Section 6402 reads in part:

The storage, use or other consumption in this State of 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 inventory, is exempted from the use tax.

Section 6275 of the Sales and Use Tax Law reads:

Every person making any retail sale of a vehicle required to be registered under the Vehicle Code or of a vessel or an aircraft as defined in this article, is a retailer for purposes of this part of the vehicle, vessel or aircraft, regardless of whether he is a retailer by reason of other provisions of this part. (Emphasis added.)

Receivers, trustees, and the United States are included in the definition of a person under Section 6005 of the Sales and Use Tax Law.

Executors and administrators of estates are the persons making sales in probate matters. Thus, it seems clear that the Marshal made the sale of the yacht and is the "retailer" of the yacht.

A Marshal is an officer of the United States. Henry v. Sowles (D.C. Vt. 1886) 28 F. 481. It follows that the Marshal is an "instrumentality" of the United States Government.

Section 6402 states that property purchased from an instrumentality is exempt from use tax. There are exceptions, but the yacht does not appear to come under any of them. The exemption does not turn on a requirement that the retailer own the property sold.

Section 960, title 28, of the United States Code reads:

Any receiver, liquidator, referee, trustee or other officers or agents appointed by any United States Court who is authorized by said court to conduct any business, shall, from and after the enactment of this act, be subject to all state and local taxes applicable to such business the same as if such business were conducted by an individual or corporation. (Emphasis added.)

The bankruptcy cases (State Board of Equalization v. Boteler, 131 F.2d 386; State Board of Equalization v. Goggin, 191 F.2d 726) have held that the trustee in bankruptcy is not conducting a business when he sells business assets in the course of liquidating the business, and the provisions of 28 U.S.C. 960 are not applicable because that section specifically required the officer, trustee or agent to "conduct the business".

Section 960 of the United States Code is not specifically limited to bankruptcy matters so sales made by the U.S. Marshal acting under orders by the Federal Court in admiralty matters should be considered the same as sales made by a trustee acting under orders of the Federal Court in bankruptcy matters.

The Marshal in the admiralty matter was not conducting a business. Instead, he was liquidating an asset - the yacht.

It seems that the purchaser, REDACTED TEXT, should prevail under Section 6402 of the Sales and Use Tax Law and also under the case law in the Goggin and Boetler decisions.

RHA:dse [lb]