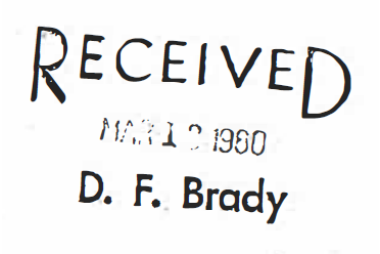
State of California 600.0130 Board of Equalization

Memorandum 600.0130

To All Training Class Participants Date: March 17, 1980

From Mary C. Armstrong
Legal



Subject: SB 1019

Two questions needing further clarification were raised during the recent training classes. Both of the questions were in reference to Senate Bill 1019.

1. Q. Are fees for sport "fishing includable in the computation of the *$5,000* aggregate amount under Regulation 1594(a)(3) when determining whether or not a person "is regularly engaged in commercial deep sea fishing?"

A. We note that although Regulation 1594(a)(3) as amended makes reference not to "commercial fishing operations" but to "fish receipts," Senate Bill 1019 which amended Revenue and Taxation Code Section 6368 provides:

> "(bl For purposes of this section, it shall be rebuttably presumed that a person is not regularly engaged in the business of commercial deep sea fishing if the person has gross receipts from commercial fishing operations of less than five thousand dollars ($5,000) a year." {Emphasis added)

We have determined that receipts from fees from sport fishing are clearly within the meaning of the term "commercial fishing operations" as provided in Revenue and Taxation Code Section 6368. It has long been the position of the board that fishing party boat operators are engaged in "commercial fishing operations" when they take out fishing parties for hire. This view is expressed in Business Tax Annotations 600.0160 and 600.0180.

As such, receipts from fees from party boat operations may properly be used to determine whether a given operator has reached the $5,000 aggregate amount imposed by Senate Bill 1019.

2. Q. With regard to the lease of mobile transportation equipment, if there are written or oral representations made in lease negotiations which raise the implication that the tax is the lessee's obligation, but the lease contract itself does not separately state the tax, should the lessor be considered to have had separately stated the tax and represented to the lessee that the tax was the lessee's obligation?

A. No. We will look to the actual contract as the final embodiment of the terms of the contract to determine whether or not lessors of mobile transportation equipment have separately stated the tax or represented the tax as the lessee's obligation. To the extent Mr. Don Hennessy's letter of February 20, 1980 makes reference to "oral representations" or "statements in the lease documentation" as being enough to cause the Board's auditors to make a finding that the lessor has caused the lessee to believe the tax is imposed on the lessee, it should be disregarded. The intentionally strong language in Mr. Hennessy's letter was to alert lessors of mobile transportation equipment to some of the dangers involved, however, auditors should look only to the actual contract to determine whether such representations have been made.

Mary C Armstrong

MCA:ba

cc: Mr. Don Brady.
Mr. R. Nunes
Mr. D. Hennessy
Mr. D. Craig
Mr. B. Henline
Mr. T. O'Brien