

M e m o r a n d u m**600.0378****To** : Audit Review & Refunds**Date** : December 14, 1982**From** : Legal (RLD)**Subject** : Commercial Passenger Fishing Vessel

This is in reply to your October 6, 1982 memorandum regarding a letter you received from the REDACTED TEXT. Specifically, you asked:

"Can the commercial fishing vessels as described in the attached letter also be considered common carriers as defined in Regulation 1621?"

The letter from the association states that the vessels are used in the business of carrying any member of the public for hire. Although we agree that the members who so use their vessels are "common carriers" as defined in the regulation, we do not think that the exemption provided in the regulation would generally apply to the sportfishing vessels. The exemption is based on Section 6385(a), Revenue and Taxation Code, which provides:

"There are exempted from the computation of the amount of the sales tax the gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this State and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier. The term "common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce."

It is obvious that fuel consumed in a sportfishing trip that commences and ends in California would not be "shipped by the seller via the purchasing carrier...to a point outside this state". As provided at Regulation 1621 (d) (1) (A.), "The bill of lading must show the seller as consignor. It must indicate that the described goods are consigned to the common carrier at a specified destination outside this state". (Emphasis added.)

"Regulation 1594 specifically states that oil and grease are not considered component parts of watercraft. Can Diesel fuel be included as not being a component part under this Regulation?"

It is our opinion that diesel fuel is not a component part of a vessel. Regulation 1594(c) (2) lists the excluded items:

"Property is not considered a component part of a watercraft for purposes of the exemption if it is a kind commonly treated as expense items and is not affixed or attached to the watercraft in a substantial manner when in use. The following examples are illustrative only, and do not constitute a complete list:

"Portable equipment,... oil, grease, soap, cleaning materials and other consumable supplies."

Diesel fuel is clearly a consumable supply.

We hope this answers your questions; however, if you need further information feel free to write again.

RLD: jw