



STATE BOARD OF EQUALIZATION

November 19, 1965

Gentlemen:

We have completed our review of the above-named taxpayer's petition for Redetermination of sales and use taxes.

After making a further study of the legal issues involved, it has been determined that a yacht broker will not be regarded as the retailer on the basis that he signed a conditional sales contract as "seller" provided he has retained a letter, telegram, or other writing sufficient to evidence that the buyer's offer was communicated to and accepted by the owner of the yacht or ship prior to execution of the conditional sales contract. This requirement is consistent with provisions of Section 8946 of the Business and Professions Code which requires a yacht broker to obtain written authorization from his principal before engaging in any transaction for which a license is required.

Where no such writing has been retained, the broker's listing agreement will be construed to have granted him authority to enter into a contract of sale. Where the broker has authority to enter into a contract of sale as a sales agent, collects the price, and delivers or arranges delivery of the vessel, we remain of the opinion that he is a factor performing the acts necessary to vest ownership in the buyer and is making a consignment sale. Section 2026 of the Civil Code defines a factor to include:

“...an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefore from the purchaser.”

We have directed the field staff to make a further reaudit of you client, making adjustments in accordance with what has been set forth above. Additionally, our review has disclosed that a number of brokerage sale transactions were included in the measure of tax solely on the basis that a blank bill of sale or power of attorney was obtained after a written agreement was entered into between buyer and owner for the sale of the vessel. We have directed that these transactions also be removed from the measure of tax by reaudit. At the time the reaudit is completed, your client will be advised of the amounts of these adjustments. When the reaudit is completed, this matter will be resubmitted to the Board for Redetermination.

Very truly yours,

W. E. Burkett
Associate Tax Counsel

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