



STATE BOARD OF EQUALIZATION

(916) 445-6450

August 30, 1991

This is in reply to your August 2, 1991 letter regarding the application of use tax to the use in California of a vessel under the following facts you described:

“We represent a California-based company (the 'cruise company') whose primary business is chartering vessels for social and entertainment events in California waters. The cruise company's vessels are chartered for events which take place both underway and dockside.

“The cruise company wishes soon to purchase a 200-foot-long vessel to be constructed by a shipbuilder out of state. The vessel is expected to be launched on September 7, 1991. The cruise company and the shipbuilder would enter on that date into a bareboat charter agreement by which the cruise company would lease the vessel to the shipbuilder for a term of more than 90 days. The agreement would call for the cruise company to receive a portion of revenues generated by its own or the shipbuilder's use or rental of the vessel during the charter period.

“The shipbuilder plans to host a dockside 'launching party' aboard the vessel on September 7, 1991. This event would not generate revenues but would, it is hoped, develop future business opportunities for both the shipbuilder and the cruise company. Over the following 40 to 45 days, between two and five additional social events would be held aboard the vessel, both underway and dockside. These functions might or might not include profit-making charters. Sometime in mid-October, the vessel would sail to a second state, where it would be put to similar use.

“On or after December 7, 1991, the bareboat charter agreement would expire, and the vessel would sail to California. Immediately after its arrival at the cruise company's headquarters, the vessel would be employed by the cruise company for social events in California waters, both underway and dockside. The vessel most likely would remain in California indefinitely.”

Given this information, you asked for confirmation of your opinion that the cruise company's purchase of the vessel would not be subject to California use tax. We agree with your conclusion.

Revenue and Taxation Code section 6246 provides a presumption that tangible personal property which is shipped or brought to this state by the purchaser was purchased from a retailer for use in this state. However, Sales and Use Tax Regulation 1620, subdivision (b)(3), provides that prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California will be accepted as proof of an intent that the property was not purchased for use in this state.

Since, under the facts you present, the vessel will be leased outside California to a lessee who will use the vessel outside California for 91 days, we conclude that, under subdivision (b)(3) of Regulation 1620, the purchase of the vessel is not subject to use tax.

We note that, since you did not identify your client, this opinion is provided for general information, and your client cannot rely upon the opinion for purposes of Revenue and Taxation Code section 6596.

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

Very truly yours,

Ronald L. Dick
Senior Tax Counsel

RLD:sr