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October 21, 1996

Mr. C--- J--- W---
W--- & C---
Attorneys at Law
XXXX --- --- Drive, Suite XXX
--- ---, CA XXXXX

Re: D--- L---

Dear Mr. W---:

This is in response to your request for an opinion regarding the application of California use tax to D--- L---' ("L---") purchase of a yacht from Bertram Manufacturing in the state of Florida.

You state that L--- is purchasing a vessel from Bertram Manufacturing in the state of Florida. L--- will pay for the vessel in Florida, and Bertram will deliver the vessel to L---, or his agent, in Florida. After the purchase, L--- may use the vessel in Florida for a short period of time, possibly as little as 14-21 days. L--- will then have the vessel broken down in Florida and shipped by a licensed carrier to California. Upon arrival in California, a third party (independent of L---) will, for a fee paid by L---, reassemble the vessel. Upon that reassembly, L--- will have the vessel placed into the ocean at San Diego, California and the vessel will then be voyaged to Mexico for a minimum of 4 to 5 months of continuous usage in Mexican territorial waters.

You inquire as to whether the transaction will be subject to California use tax under the "6 month test" as long as the yacht, after arriving in California for reassembly is "used or stored outside of California one-half or more of the time during the six-month period immediately following its entry into this state."

Revenue & Taxation Code section 6201 imposes a use tax on the storage, use or other consumption in this state of tangible personal property purchased from any retailer. Regulation 1620(b)(3) explains when property purchased outside California is regarded as purchased for use in California:

“[P]roperty purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. When the property is first functionally used outside California, the property will nevertheless be presumed to have been purchase for use in this state if it is brought into California within 90 days after its purchase, unless the property is used or stored outside of California one-half or more of the time during the six month period immediately following its entry into this state....

“For purposes of this subparagraph ‘functional use’ means use for the purposes for which the property was designed.”

You state that the yacht will be purchased in the state of Florida and may be used in the state of Florida for as little as 14-21 days. We understand this to mean that the first functional use of the yacht will be outside California, and that the yacht will be brought into California within 90 days after its purchase, exclusive of any time of storage for shipment to California. It appears from your letter that you misunderstand the 90 day test. The 90 day test only applies to the period before the yacht enters California.

Since the yacht enters California within 90 days of purchase, it is presumed to be purchased for use in California. Tax applies unless Mr. L--- overcomes that presumption. The manner in which the presumption can be overcome is by showing that the yacht will be used outside of California one-half or more of the time during the six month period immediately following its entry into California. You state that after the yacht is reassembled in California, it will be placed in the ocean at San Diego and will then be voyaged to Mexico for a minimum of 4 to 5 months of continuous usage in Mexican territorial waters. Although you do not specify the amount of time the yacht will be in California prior to leaving California waters, for purposes of this opinion, we assume that the yacht will be in California no more than one month prior to departing California waters for Mexico. Based on this assumption, the yacht will be used outside California for at least four months during the 6 months immediately following its entry into California. As such, Mr. L--- will overcome the presumption that he purchased the yacht for use in California and use tax will not apply. We also note that you state that your client may use the yacht in Florida for a short period of time before arriving in California. If your client does not use the yacht in Florida and the yacht is first functionally in used in California, the yacht will be considered to be purchased for use in California and will be subject to California use tax measured by the sales price of the yacht.

This opinion is based on the facts stated in your letter and the assumptions made above. If our assumptions are incorrect, this opinion does not apply. If such is the case and you wish an opinion applicable to the actual facts of the transaction, please write again and describe the transaction with specificity.

Yours very truly,

Charlotte Chyr
Tax Counsel

CC:cl

cc: --- --- District Administrator