



STATE BOARD OF EQUALIZATION

July 2, 1996

Re: Use Tax Determination
Boat Name:
Account No.
U.S. Coast Guard Documentation No.

Dear Mr.

This is in response to your letter of March 21, 1996, in which you inquire of the application of use tax to your purchase of a yacht, now named XY.

The facts surrounding the purchase and subsequent events following that purchase of XY are listed in your letter as follows:

1. Boat was purchased in South Carolina on October 28, 1994, with intent to travel outside U.S. waters.
2. Boat was kept and used in South Carolina until it was determined that a refit was necessary to make the boat seaworthy and safe for extended sea voyages.
3. A major refit was needed to prepare boat for safe ocean travel, so boat was moved to a more convenient port at which to perform the work (Long Beach, California) in proximity to Phoenix, Arizona.
4. The boat was documented in Long Beach, California because that is the U.S. Coast Guard Regional Office for residents of Phoenix, Arizona. This has no bearing upon where boat would be kept.
5. Owners are residents of Phoenix, Arizona and intend to remain so.
6. Boat arrived in California at Long Beach Marina Shipyard on February 7, 1995 - 102 days after the purchase date.
7. On February 13, 1995, before the refit work could be started, a power boat next to XY burned to the waterline and XY suffered

\$45,000 in damage. The refit could not be performed and the boat could not leave U.S. waters."

You provided a copy of an invoice for repairs to XY which were completed in Long Beach California on February 8, 1995. You also included a copy of an invoice for marine space rental which indicates the yacht was moored at --- South Carolina for the months of November and December 1994 and January 1995. Lastly, you included a certificate of documentation issued by the United States Coast Guard on the vessel at Los Angeles-Long Beach, California on August 2, 1995.

Use tax applies to the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for use in California. (Rev. & Tax. Code §§ 6201, 6401.)

Subdivision (b) (3) of Regulation 1620, a copy of which is enclosed, explains when property is regarded as .having been purchased for use in California as follows:

"Property 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 of California, the property will nevertheless be presumed to have been purchased 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 and immediately following its entry into this state. Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California.

* Note: note changes to Reg 1620 SPJ 12/24/01 and later changes SPJ 4/18/03

"For purposes of this subparagraph 'functional use' means use for the purposes for which the property was designed."

If you used the vessel outside California for more than 90 days prior to its first entry into California, exclusive of time of shipment and time of storage for shipment to California, you will not be presumed to have purchased the vessel for use in California, and use tax will not apply. Although you indicate that you "used" the yacht following your purchase in South Carolina on October 28, 1994 up until you brought it into

California, you have not described the facts regarding such use. We therefore are unable to determine whether you would be regarded as having used the vessel outside California for more than 90 days prior to the vessel's first entry into California, exclusive of time of shipment and time of storage for shipment.

If you are not regarded as having used the vessel outside California more than 90 days prior to its entry into this state, you will be presumed to have purchased the vessel for use in this state and will owe use tax, unless you can establish that the vessel was used or stored for one-half or more of the time during the six-month period immediately following its entry into this state (which was apparently on February 7, 1995). The fact that the yacht remained in California for repairs longer than expected due to the accidental burning is not relevant to the determination whether you are regarded as having purchased the vessel for use in California.

If you have questions regarding what type of documentation you need to present to establish that you did not purchase the vessel for use in California, or you have other questions regarding this transaction, please contact the Consumer Use Tax Section of the Board, 450 N Street MIC:37, P. O. Box 942879, Sacramento, CA, 94279-0037, telephone: (916) 445-9524.

Yours very truly,

Anthony I. Picciano
Tax Counsel

AIP:cl

Enclosure (Reg. 1620)

cc: Out-of-State District Administrator
Ms. Oveta L. Riffle (MIC:37)