



**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
TELEPHONE: (916) 324-2634  
FAX : (916) 324-2586

JOHAN KLEHS  
First District, Hayward

DEAN F. ANDAL  
Second District, Stockton

ERNEST J. DRONENBURG, JR.  
Third District, San Diego

KATHLEEN CONNELL  
Controller, Sacramento

JOHN CHIANG  
Acting Member  
Fourth District, Los Angeles

E. L. SORENSEN, JR.  
Executive Director

June 23, 1997

Ms. D--- R---  
P--- Y---  
XXXX --- Cove  
--- ---, CA XXXXX

Re: P--- Y---, Inc. SR -- XX-XXXXXX

Dear Ms. R---:

This responds to your letter dated June 6, 1997 to the Legal Division of the State Board of Equalization. You write:

“I would like a response in writing as to what documents I need to have in file to substantiate a nontaxable status of a sailing boat we are delivering offshore to a California resident. He will be purchasing the boat for use outside of California.

“Would you please address the issue of him returning the boat to California for provisioning and if that affects our nontaxable status on this boat.”

For purposes of this opinion letter we assume that you are the retailer of the vessel. We further assume that by the term “offshore” you mean a point outside of California territorial waters, and that by the term “delivering” you mean the transferring of both possession to and title of the sailboat to the purchaser. We also assume that the purchaser will *not* take possession of the sailboat prior to the offshore transfer and will travel to the offshore delivery point by means of transportation other than the sailboat which he is purchasing. We also assume that the purchaser will sail the boat back to California after title and possession are transferred to him.

## Discussion

A retail sale of tangible personal property in California is subject to sales tax measured by the retailer's gross receipts from the sale, unless specifically exempted or excluded by statute. (Rev. & Tax. Code §§ 6012, 6051.) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration is a sale. (Rev. & Tax. Code § 6006(a).) However, since there will be no transfer in California to the purchaser of title to or possession of the sailboat, the sale of the vessel will not result in a California sales tax liability. (Rev. & Tax. Code § 6006; Reg. 1620(a)(1).) To document where and when the transfer of title and possession occur, you should prepare a bill of sale which states the terms of delivery of the vessel and transfer of title and which is signed by both the person making the delivery and the purchaser. The purchaser should sign the bill of sale at the time at which the transfer takes place and note on the document the date and place of transfer. You should also obtain and retain copies of the ships' logs showing the trip.

In general, when sales tax does not apply, *use* tax measured by the sales price applies to the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (Rev. & Tax. Code §§ 6011, 6201, 6401.) Regulation 1620(b)(3), in pertinent part, explains when property is regarded as having been 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 of California, the property will be nevertheless 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 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.”

Thus, if the sailboat was first functionally used in California, use tax would apply. "Functional use" means the use for which the vessel was designed. Under your description of the transaction, the first functional use of the sailboat after the transfer of title and possession to your purchaser will occur *outside* of California when the purchaser sails the boat through out-of-state waters back to California for provisioning. (But see BTLG Annot. 570.0430 (1/7/74, 3/23/84, 1/28/91).) However, since the sailboat will re-enter California within 90 days of its completed delivery and purchase, it will be presumed to have been purchased for use in California. (See also Rev. & Tax. Code § 6247.)

As explained in Regulation 1620, this presumption can be overcome for the vessel if the purchaser establishes that for the period of six months after its entry into California, the sailboat is used principally outside California. If during the six-month period immediately following the vessel's entry into this state after its purchase, it will be used or stored outside of California one-half or more of the time, the vessel will not be considered purchased for use in California, and the use of the vessel will not be subject to California use tax. (Reg. 1620(b)(3).) It would be advisable for you to obtain and retain a statement signed under penalty of perjury by the purchaser stating that the sailboat will be used outside of California for more than one-half of the six month period immediately following its re-entry into this state after purchase from you. This is especially true when you know or have reason to know the purchaser is a resident of this state. (See Rev. & Tax. Code §§ 6203 & 6247.)

The purchaser should keep adequate records to document the location of principal use of the vessel for the first six months immediately following its re-entry into California, e.g., complete ship's logs of dates and periods that the sailboat is in and out of California, receipts of payment for berthing, and any other receipts or documents supporting out-of-state use and location of the vessel.

Before closing, I note that on your January 25, 1988 application for a seller's permit you indicated that P--- Y---, Inc. is both a broker and a retailer. Therefore, for your general information (unrelated to your request for this opinion letter), I am enclosing a copy of recently revised Regulation 1610 which now includes subdivision (c)(2)(C) relative to purchases of vessels through brokers.

I hope the information in this letter is of assistance. Please write again if we may answer any further questions.

Sincerely,

Sharon Jarvis  
Senior Tax Counsel

SJ:rz

Enclosure: Regulation 1610

cc: Oakland District Administrator - CH