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July 9, 1997

Mr. --- --- [W]
--- & ---
Attorneys at Law
XXXX --- ---, Suite XXX
---, CA XXXXX

Re: --- --- [M]

Dear Mr. [M]-:

This is in response to your letter of May 28, 1997 in which you inquire about the application of sales and use tax to a proposed purchase of a vessel which will be delivered to your client at a point outside of California.

You explain that your client, --- --- (Buyer), is purchasing a new vessel, a 43 foot Tiara Model 53, from the --- --- (Seller), which you describe as a "California Dealer of Tiara Yachts." Seller will purchase the vessel for resale from the Tiara manufacturer and customize the vessel per the contract with the Buyer. It is anticipated that the Buyer will accept delivery of the vessel in July of 1997 at an "Offshore Delivery Point." Buyer will be transported to the "Offshore Delivery Point" via a separate transport vessel and, if the vessel meets the contracted specifications, will accept delivery and take the vessel to Mexico without entering California waters. It is Buyer's intent to

"use the Vessel on short voyages and weekend trips while the Vessel is moored in Mexico. While long range international voyaging plans have not yet been solidified it is certain the Vessel will be kept and used in Mexico approximately four (4) months after delivery of the Vessel to the Buyer at the Offshore Delivery Point. Thereafter the Vessel will be used for international and domestic leisure travel."

Although you have not included a copy of the contract for the purchase of the vessel you have outlined the provisions regarding payment, risk of loss and possession. The purchase price is "approximately six hundred thousand dollars," consisting of "partial payment deposits" with

the final payment due and payable after Buyer's final inspection and acceptance of the vessel at the "Offshore Delivery Point." Seller's right to retain the deposits are contingent upon Buyer's acceptance of the vessel after final inspection. The risk of loss remains with the Seller up to the "final inspection and delivery" to Buyer. Possession and control of the vessel is to remain with Seller prior to delivery of the vessel to Buyer. You have not stated whether there are any title passage clauses in the contract. However, in your letter you cite Uniform Commercial Code section 2401 and Regulation 1628(b)(3)(D) in support of your conclusion that, absent a contractual provision that title passes prior to delivery, title passage occurs at the time the seller completes its duties with respect to physical delivery of the property. Accordingly, we assume that there are no provisions indicating that title will pass to Buyer prior to Seller's delivery at the "Offshore Delivery Point" and that title passes at the time and place of delivery.

It is your conclusion that, under these facts, your client's purchase of this vessel will not be subject to sales or use tax in accordance with Regulation 1620(b)(3). Although it has not been specifically stated, for purposes of this analysis, we will assume that Buyer is a California resident.

As you know, retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless the sale is exempt from taxation by statute. (Rev. & Tax. Code § 6051.) 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 the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.) Revenue and Taxation Code section 6396, as explained by Regulation 1620, exempts from sales tax the gross receipts from sales of tangible personal property which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside the state by the retailer by means of facilities operated by the retailer or by delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point. Subdivision (b)(3) of Regulation 1620, under the use tax portion of this regulation, states the general rule that property sold and delivered to a point outside of the state by a California retailer to a resident of California, is presumed to have been sold for use in California. However, Regulation 1620(b)(3) continues:

"[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 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 immediately following its entry into this state. 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."

Accordingly, so long as the vessel is delivered outside of California, is first functionally used outside of California, is functionally used in excess of 90 days outside of California, and does not enter this state until 90 days after purchase, the Buyer's subsequent California use, if any, will not be subject to California's use tax. If the vessel is delivered outside of California and enters California waters within 90 days after purchase, Buyer's California use will be subject to use tax **unless** the vessel is used or stored outside of California one-half or more of the time during the six months after the vessel entered California waters.

If you have any further questions, please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Tax Counsel

PHJ:cl

cc: --- --- District Administrator (--)
Consumer Use Tax Section