

M e m o r a n d u m**330.2040**

To: San Diego - Auditing (WAS)

Date: February 15, 1968

From: Tax Counsel (GLR)

Subject:

In your memo of December 11, 1967 you state that "D" is engaged in the following transactions:

"A Providing sportfishing on a ticket basis to individuals.

"B Furnishing tackle on a rental basis for use on boats.

"C Providing group charter service including boat, crew and free bait for one day trips."

The boats are engaged in activities both exclusively within the three-mile limit and on trips principally outside the three-mile limit. All boats were acquired on an ex-tax basis. You ask our opinion regarding the following questions:

1. "Are the charter trips within the definition of leases and subject to tax?"

In those cases where the people merely purchase an individual ticket and do not have any say or control over where they will fish, it is our opinion that this constitutes contracts of carriage rather than rentals of tangible personal property. This is based on the fact that possession, custody and license to use the boat remains totally in the hands of the owner or his employees.

Ordinarily, group charters of fishing boats for trips to various destinations constitutes contracts of carriage rather than leases of tangible personal property.

2. "Taxpayer leases galleys to concessionairs [sic]. Rental is 5 cents per passenger carried. We consider these taxable leases. Should the lease be exempt (or partially exempt) if a trip went outside territorial waters?"

We agree with your conclusion that the taxpayer is leasing the galleys. As set forth in Section 6006.1, only the rentals attributable to the time the boats are in this state will be subject to tax.

3. "Tackle is rented on shore for use on the boats ..• Should the rental be considered differently if the trip goes outside territorial waters?"

The rentals should be apportioned as explained in Section 6006.1. Only those rentals attributed to the time that the tackle is in this state is subject to tax. We have assumed that the tackle was purchased ex tax.

GLR:kc [lb]