



STATE BOARD OF EQUALIZATION

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February 6, 1996

Mr. D--- B. G---
Attorney at Law
XXXX --- --- Avenue
--- ---, CA XXXXX

Re: E--- Testamentary Trust

Dear Mr. G---:

This is in response to your letter dated January 8, 1996 regarding the application of tax to the sale of a vessel by a trust. You state:

“The transaction involves the sale of an 85 foot motor vessel named ‘The S--- of N---.’ The vessel is presently owned by the T--- W. E--- Family Trust. This trust was created pursuant to the Last Will and Testament of T--- W. E---, deceased. The sole beneficiary of the T--- W. E--- Family Trust is A--- E---, the son of T--- W. E---. The trustee of the family trust is planning to sell the motor vessel to C--- B---, the natural mother of A--- E--- and the ex-wife of T--- W. E---.”

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by gross receipts, unless specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) A retail sale is a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) When sales tax does not apply, the use tax, measured by the sales price of the property sold, applies to the use of property purchased from a retailer for storage, use or other consumption in California, unless such use is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6201, 6401.)

You ask whether the exemption set forth in Revenue and Taxation Code section 6285 applies to the transaction at issue. Section 6285 provides that the sale or use of a vessel is exempt from tax when either of the following occurs:

“(a) The person selling the property is either the parent, grandparent, child, grandchild, or spouse, or the brother or sister if the sale between that brother or sister is between two minors related by blood or adoption, of the purchaser, and the person selling is not engaged in the business of selling the type of property for which the exemption is claimed.

“(b) The sale is to a revocable trust in which all of the following occur:

“(1) The seller has an unrestricted power to revoke the trust.

“(2) The sale does not result in any change in the beneficial ownership of the property.

“(3) The trust provides that upon revocation the property will revert wholly to the seller.

“(4) The only consideration for the sale is the assumption by the trust of an existing loan for which the tangible personal property being transferred is the sole collateral for the assumed loan.”

Section 6005 provides that a trust is considered a person. You state that the current owner of the vessel is the T--- W. E--- Family Trust. This means that the person selling the vessel would not be A--- E---, the beneficiary of the trust; rather, the seller would be the trust itself. Since a trust is not a person of the type listed in subdivision (a) of section 6285, the transaction cannot be exempt from tax under section 6285(a). Subdivision (b) concerns a sale to a revocable trust. Since C--- B--- is a person that is not a revocable trust, a sale to Ms. B--- would not be exempt from tax under section 6285(b).

We assume that the trust is not a dealer of vessels. The sale of a vessel by a person other than a dealer of vessels is not subject to sales tax. (Reg. 1610(b)(1)(C).) However, the purchaser of a vessel from a person such as the E--- trust must pay use tax measured by the sales price of the vessel to the purchaser, unless the transaction is otherwise exempt from tax. (Id.) Based on the facts you have provided, there is no exemption from both the sales tax and the use tax that applies to the transaction about which you inquire.

You do not indicate whether the vessel is a documented vessel, or is instead an undocumented vessel. If the vessel is a documented vessel, meaning that it is required to be documented by the United States Coast Guard, and the United States Coast Guard has issued a valid marine certificate for it, Ms. B--- must report and pay tax to the Board on her purchase of the vessel. (Reg. 1610(c)(2)(A).) Any vessel which is not required to have, and does not have, a valid marine certificate issued by the United States Coast Guard is an undocumented vessel. (Reg. 1610(c)(2)(B).) If the vessel is undocumented, Ms. B--- must pay the tax to the Department of Motor Vehicles, acting for, and on behalf of, the Board pursuant to section 9928 of the Vehicle Code, at the time of making application for registration. (Id.)

If you have further questions, please feel free to write again.

Sincerely,

Kelly W. Ching
Staff Counsel

KWC:cl

cc: --- --- District Administrator