

M e m o r a n d u m**585.0198**

To : Mr. Geoffrey E. Lyle
Supervising Tax Auditor
Petition Section (MIC:38)

Date: July 21, 1995

From : Thomas J. Cooke
Staff Counsel

Subject : [H]
Account No. S- -- XX-XXXXXX-010

This office has received your memorandum dated May 1, 1995, to which you attached a petition for redetermination filed on behalf of the above taxpayer. On April 16, 1993, in response to a memorandum from Robert McCanne of the Consumer Use Tax Section, the Legal Section issued an opinion that use tax was applicable on the purchase of a documented vessel by [H]. Based on this opinion, the Consumer Use Tax Division issued a Notice of Determination to [H] on January 24, 1995.

In the attached petition for redetermination, the taxpayer's representative has stated reasons for disagreeing with the Legal Division's memorandum. You request that the Legal Division respond to the arguments stated in the petition for redetermination.

The taxpayer purchased a documented vessel which was physically located in Long Beach, California. The bill of sale provided that title to the vessel would transfer to the purchaser upon delivery "outside the territorial waters of the state." Immediately after delivery of the vessel to the taxpayer in international waters, the taxpayer sold the vessel to his father, [H2] "outside the territorial waters of the state." The vessel immediately re-entered "the territorial waters of the state." The taxpayer claims that no sales or use tax applies to his purchase of the vessel because the sale occurred outside the state and the vessel was not purchased for his use in California. Revenue and Taxation Code Section 6285(a) states that the transfer of a vessel between enumerated family members is exempt from sales and use taxes in certain situations.

It is our opinion that determinations should be issued to both the seller and the purchaser in this case. We believe that there are insufficient facts for the Board to decide with certainty whether the seller or the purchaser is responsible for the tax. The basis for issuing a determination against both the seller and the purchaser is our belief that the transaction is a "sham" and the mid-ocean purchase and sale was clearly intended to defeat the imposition of the applicable tax.

In any hearing in response to a petition for redetermination, if there is evidence that [H] has been paying property taxes, slip rental or upkeep on the vessel, he will be liable for the tax on the basis that [H2], as registered owner, is merely a "straw man." On the other hand, if [H2] is really the owner because he continues to pay taxes, slip rental or upkeep, the Board should assess tax against him on the basis that the facts and circumstances of the transaction show that [H] was merely a "straw man" or an agent to facilitate [H2]'s purchase of the vessel.

TJC/cmm

cc: Consumer Use Tax Section (MIC:37)