

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

*In the Matter of the Petition of HAROLD SOMMER for Redetermination of Use Tax*

*Appearances:*

*For Petitioner:* Mr. William E. Vaughn  
Attorney at law

*For Staff:* Mr. J. Kenneth McManigal  
Tax Counsel

MEMORANDUM OPINION

This opinion considers the merit of a petition for redetermination of use tax in the amount of \$750 plus statutory interest determined against petitioner as the result of his purchase of *Wander Bird*, a German-built schooner, on February 17, 1970. At that time, *Wander Bird* was not documented as a vessel, it had no masts, it had no engine, it had no steering facilities, it was being used as a residence, it was in a leased berth, and it was moored to shore by cables. According to the records of the Marin County Assessor, *Wander Bird* was tangible personal property, not real property.

Revenue and Taxation Code Section 6367 exempts from sales and use taxes the gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale. However, the exemption does not apply to the gross receipts from the sale of, or to the storage, use, or other consumption in this state of a vessel as defined in Article I (commencing with Section 6271) of Chapter 3.5 of Part 1 of Division 2 of the Revenue and Taxation Code, such part being known as the Sales and Use Tax Law.

With certain exceptions not applicable herein, Section 6273 defines “vessel” to mean any boat, ship, barge, craft, or floating thing designed for navigation in the water. Section 6291 provides that the use taxes imposed with respect to the storage, use or other consumption in the state of vessels as defined in Section 6273 are due and payable by the purchaser at the time the storage, use or other consumption of the vessel first becomes taxable.

Being a schooner, *Wander Bird* was a vessel as defined by Section 6273. Do the facts that when petitioner purchased *Wander Bird* it was not documented as a vessel, it was in a modified state, and it was being used as a residence dictate a conclusion that *Wander Bird* was no longer a vessel for purposes of the Sales and Use Tax Law? We think not. Being a boat, ship, barge, craft, or floating thing designed for navigation in the water, it was and remains a vessel as defined by the section.

To the contrary, it has been contended that *Wander Bird* was a floating item of tangible personal property, not a vessel. In support thereof, reference has been made to the “traditional admiralty concept of ‘vessel’”, and various authorities and court decisions pertaining thereto have been advanced. However, petitioner has cited no authority for the proposition that “vessel” as defined in Section 6273 for purposes of the Sales and Use Tax Law must coincide with such concept or any other concept of “vessel” for purposes of other laws, nor are we aware of any. Rather, the power of a state to make classifications of persons or property for the purpose of taxation is very broad, and if a classification of persons or occupations made for the purpose of imposing taxes is founded on natural, intrinsic or fundamental distinctions which are reasonable in their relation to the object of the Legislature and otherwise, they will be deemed to be valid (*Henry’s Restaurant of Pomona, Inc. v. State Board of Equalization*, 30 Cal.App.3d 1009; *Roth Drug, Inc. v. Johnson*, 13 Cal.App.2d 720). In the absence of a showing to the contrary, it is assumed that there are good grounds for the classification, and the act will be upheld (*Roth Drug, Inc. v. Johnson*, supra). Petitioner has made no such showing to the contrary with respect to Section 6273.

Assuming, however, that resort to the traditional admiralty concept of “vessel” is appropriate, we would still conclude that *Wander Bird* was a vessel. Under that concept, the test is whether *Wander Bird* was a watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water (1 U.S.C.A., § 3).

In support of the contention that the *Wander Bird* was not such a craft or contrivance, petitioner has cited *Evansville and B.G. Co. v. Chero Cola Co.*, 271 U.S. 19; *The Schooner Frances McDonald*, 254 U.S. 242; and *Murray v. Schwartz*, 175 Fed.2d 72. The latter two cases did not concern the definition of a vessel at all, but rather the question of whether certain vessels were subject to admiralty and maritime jurisdiction. The *Evansville* case involved a wharfboat which had a concrete lined bottom, was connected with city water, electrical and telephone systems, and was used as an office and warehouse. The court, emphasizing the permanent nature of its location, concluded that it was not practically capable of being used for transportation.

We believe the status of *Wander Bird* is more nearly reflected by the following cases, holding that the watercraft involved were vessels: *The Art*, 17 Fed.2d 446 (moored without machinery or sails and used as a residence); *Pleason v. Gulfport Shipbuilding Corporation*, 221 Fed.2d 621 (moored to a dock with engines, propellers, and steering mechanism removed, and used for processing shrimp); and *Campbell v. Loznicka*, 181 Fed.2d 356 (bomb target boat that was a hull capable of being towed.)

Accordingly, it is concluded that the transfer of *Wander Bird* to petitioner was not an exempt occasional sale, that use tax applied as the result of petitioner’s storage and use of *Wander Bird* in California, and that petitioner was liable for such tax.

Petitioner has establish, however, that the purchase price of *Wander Bird* was less than that used as the measure or tax in the determination. The use tax, accordingly, shall be reduced to \$500 based on a purchase price of \$10,000.

Done at Sacramento, California, this 1st day of May 1974.

George R. Reilley, Chairman

John W. Lynch, Member

Richard Nevins, Member

Attested by: W. W. Dunlop, Executive Secretary