

1 Petitioner asserts that the sole purpose of the vessel was for commercial sport fishing off the
2 San Francisco Coast and thus contends that the commercial deep sea fishing exemption is applicable to
3 his use of the vessel. In support, he has provided vessel logs for the period April 9, 2006, through
4 August 8, 2007, income tax returns for 2007 that show gross receipts of \$5,912, and various other
5 documents. To explain the minimal gross receipts, petitioner states it took him over a year to get the
6 vessel certified, he thereafter sustained a career-ending injury, and he sold the vessel in July 2008. The
7 Department requested other specific evidence which petitioner did not provide.

8 Petitioner has conceded that he had no gross receipts related to this business in 2006 and that
9 his gross receipts for 2007 were \$5,912. Although petitioner states that it was his intent to someday be
10 regularly engaged in commercial deep-sea fishing, such intent is not the test. To qualify for the
11 exemption, the watercraft must be used by persons who are regularly engaged in commercial deep sea
12 fishing, and the watercraft itself must actually be used principally in commercial deep-sea fishing
13 operations outside the territorial waters of this state, using a test period of 12 consecutive months
14 beginning with the first operational use of the watercraft. (Cal. Code. Regs., tit. 18, § 1594, subs.
15 (a)(2), (b)(2).) Petitioner has not provided evidence sufficient to rebut the presumption that he was not
16 regularly engaged in the business of commercial deep-sea fishing because his gross receipts were less
17 than \$20,000 a year. (Rev. & Tax. Code, § 6368, subd. (b).) In addition, petitioner has not provided
18 evidence that the gross receipts of \$5,912 for 2007 were derived from commercial deep-sea fishing,
19 even though the Department did request specific documents, such as commercial fishing licenses and
20 fish tickets. Accordingly, we find that petitioner has failed to satisfy this requirement for exemption.
21 As such, we find that petitioner's use of the vessel was not exempt from tax.

22 OTHER MATTERS

23 None.

24
25 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III
26
27
28