

LOOK TO THE ACTUAL USE BEFORE AND AFTER THE LIEN DATE.

b. The consignment begins February 1 (March 1 lien date) but is indefinite. The assessor granted the inventory exemption on the basis of LTA 80/69. In July, the boat hasn't sold so the owner ends the consignment and begins using the vessel. Can the assessor retroactively deny the inventory exemption and enroll an escape assessment?

Since an escape assessment effectively shifts the burden of proof to the assessor, it would be necessary for the assessor to ascertain all of the facts prior to making the decision to enroll an escape. Once again, it is imperative to discover the subjective intent of the owner by looking at

the objective evidence. Was the original consignment agreement written or oral, and what were the specific terms? Did the consignee carry out the terms and make a bona fide effort to sell the vessel? Why didn't it sell and why was it pulled off the market? What was a reasonable time to sell a vessel of that type in the area? Notice how 133(b)(5) asks if the lessor contemplates use even if held for lease on the lien date. Based on what you've provided, I would be suspicious about an **indefinite** consignment that was pulled after **five months**, but in my opinion, that fact alone would not convince a court to uphold an escape with penalties and interest.

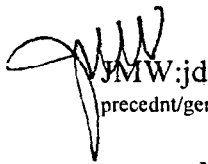
c. The consignment is for a six-month period beginning before the lien date. The boat doesn't sell, the consignment ends and the owner subsequently uses the vessel. The assessor is fully satisfied that the consignment was legitimate, that the owner really wanted to sell the vessel. However, this same situation happened last year, and the year before, and the year before that. Should the assessor retroactively deny the inventory exemption and enroll escape assessments?

Here the facts do not support an exemption. This assignment is parallel to the leases excluded by either subdivisions (b)(4) or (b)(5) or both or Rule 133. On this one, the escape should be made for all four years unless it was undisputed that thousands of boats were up for sale and not one sold during this period.

3. During the consignment period, the vessel remains in the owner's boat slip or on his property. However, the owner does not use the vessel during the consignment period. Does location or physical possession have a bearing on whether the boat is inventory?

Yes, it has a bearing, but that fact alone, is not decisive. Clearly, it would be easier for an owner to use the boat consigned to his own slip, but that could also be the best place for the consignee to display the boat for sale. So the location of the boat in the owner's possession should provoke the "why" question but if the answer reasonably contributes to the likelihood of resultant sale, then it would indicate a valid intent to sell rather than use. Again, the crucial element is the intent of the owner and the location of the consigned boat is an indicator of the true intent.

Did you bring back Bill Grommet as a retired annuitant just to think up these hypos?



JMW:jd

precednt/genexemp/1996/96009.jmw

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