State of California

Board of Equalization
Legal Division-MIC: 82

M e m o r a n d u m

185.1000

To : Ms. Oveta L. Riffle
Consumer Use Tax Section (MIC:37)

Date: December 4, 1995

From : Anthony I. Picciano
Staff Counsel

Subject: **Liability Assessed on a Vessel Purchased From a Broker/Retailer**

M--- A---
SB UT XX-XXXXXX

R--- L--- Marine
SR -- XX-XXXXXX

This is in response to your memorandum dated July 20, 1995, which refers to the collection of use taxes from Mr. M--- A---.

You requested an opinion as to whether or not Mr. A--- owes the Board of Equalization use tax resulting from his purchase of a yacht.

You state the following:

"M--- A--- owes use tax under account number SB UT XX-XXXXXX in the amount of $6,471.84 for the purchase of a vessel. The purchase was documented with the United States Coast Guard on November 23, 19XX.

"On October 25, 19XX, Mr. A--- signed an offer to purchase agreement to purchase the vessel, ---, for $65,000.00. The agreement lists M--- A--- as the buyer and P--- L--- as the seller. The heading on the agreement is P--- B--- Yachts, Inc.

"Mr. A--- has stated that he was under the impression that his transaction was through a retailer rather than a broker. He has provided a copy of an advertisement in a yachting magazine listing P---'s W--- Yachts as a new construction/yacht brokerage dealer. He has stated that P--- B--- Yachts is now

doing business as P---'s W--- Yachts. Other documents he has provided are a copy of the 1993 Directory of Licensed Yacht and Ship Brokers and Salespersons showing R--- L--- as an authorized person, and the business card of Mr. L---.

"Mr. A--- has also stated that Mr. LP--- presented himself as a licensed dealer who was authorized to collect the use tax due. Mr. A--- has presented copies of two checks which total $69,747.00. He stated that this is the $65,000.00 purchase price and tax in the amount of $4,747.00. (The tax rate at the time of purchase should have been 7.25% or $4,712.50.) He has told us that Mr. LP--- stated that the tax had to be collected in order to complete this transaction.

"At the time of the purchase, R--- LP--- had, and still has, a valid seller's permit. The account number is SR -- XX-XXXXXX. The account lists a dba of B--- LP--- Marine at XXXX --- Court as the business address and XXXX S. --- Blvd. #XXX ---, CA XXXXX as the mailing address. The mailing address on the permit is the same as the address on the offer to purchase agreement signed in 1992. All of the tax returns filed under the seller's permit number have reported zero sales."

You included for our review the Offer to Purchase Agreement, copies of two checks payable to P--- B--- Yachts totaling $69,747.00, a listing from California Yachts, a copy of the 1993 Directory of Licensed Yacht and Ship Brokers and Salespersons with Mr. LP--- listed, a copy of Mr. LP---'s business card, copies of video print-outs which show Mr. LP--- had an active seller's permit at the time of the sale in question and that he reported no sales, a Coast Guard Abstract of title on the vessel which shows the transfer of title from Mr. L--- to Mr. A---, and Mr. A---'s use tax file. Mr. A---'s file contains a letter which the Department of Boating and Waterways sent to Mr. A--- on June 23, 1995. That letter notes that the Department of Boating and Waterways determined that Mr. LP--- was a licensed yacht broker until December 1994 and that Mr. LP--- had a Security Bond as required by that license in the amount of $10,000 at the time of the sale in question. You advised us by telephone on October 20, 1995, that Mr. LP--- has sent payment of Mr. A---'s tax liability; however, you still desire an opinion for future reference.

Although, Mr. LP--- was doing business as both a retailer and a broker at the time of the sale in question, the sale here was one in which Mr. LP--- acted as a broker and not a retailer, because of the following:

1. The offer to purchase agreement was between Mr. A--- designated as the buyer and Mr. L--- designated as the seller.

2. The Coast Guard Abstract on the vessel shows title was transferred by Mr. L--- to Mr. A--- as a result of the sale.

3. The offer to purchase agreement describes the sale as a brokered transaction and includes a provision for broker's fees to be paid by the seller.

4. There is no evidence that Mr. LP--- had the ability to independently pass title of the yacht to Mr. A--- nor that he did so.

5. The offer to purchase agreement was initialed in appropriate spots by both the seller Mr. L--- and the buyer Mr. A---.

6. Mr. LP--- was a licensed broker at the time of the transaction.

Subparagraph (c)(2)(A) of provides that:

A purchaser of a documented vessel from any person other than a person who is required to hold a seller's permit by reason of the number, scope, and character of the person's sales of documented vessels, shall report and pay use tax to the Board unless the use is specifically exempt. A purchaser who holds a seller's permit, or to whom a consumer's use tax account number has been assigned, must include the tax in the purchaser's return for the period in which the vessel was purchased. On the other hand, a purchaser who does not hold a seller's permit, or to whom a consumer's use tax number has not been assigned, shall make a return and pay use tax measured by the sales price of the vessel. (Sales and Use Tax Reg. 1610(c)(2)(A).)

The yacht in question was a documented vessel. Since we have determined that the sale was made by Mr. L---, a person who did not hold a permit for sales of vessels, Mr. A--- was required to report and pay the use tax measured by the sales price directly to the Board.

If money was collected by Mr. LP--- (a retailer) from Mr. A--- under the representation that it was payment of tax, that money constitutes a debt owed to the state by Mr. LP---. (Rev. & Tax. Code § 6204.) Hence, the Board could have sought payment from Mr. LP--- of the money he collected from Mr. A---.

As to future transactions with similar facts, I am enclosing a copy of the relevant portion of 1995 Senate Bill No. 718 which amends Revenue and Taxation Code sections 6202 and 6283 effective January 1, 1996. Subdivision (b) of amended section 6202 provides that a person's liability for use tax is relieved when that person purchases a vessel through a broker if the purchaser has paid the amount of sales or use tax to the broker and obtains a receipt showing the payment of the tax.

As amended, section 6202 in subdivision (c) provides that when a person purchases a vessel from another person through a broker, if the broker collects from the purchaser an amount as sales or use tax, the broker shall be liable for that amount under section 6204 as if the broker were a retailer engaged in business in this state, and the amount collected constitutes a debt owed by the broker to this state.

I trust that this response satisfies your need for information. However, if you have any further questions in regard to these matters, please advise.

AIP:cl

cc: Ventura District Administrator