

Date 4/10/68
325.1390

Report of Hearing Officer W. E. Burkett/vs [redacted]

Pulley 55

Taxpayer [redacted]

Account Number [redacted]

Form Number [redacted]

Date of Billing 10-21-67

Period (From 7-1-64
(To 6-30-67)

Date of Hearing February 29, 1968 Time 9:00a.m.

Place Downey

Appeared on behalf of Petitioner [redacted]

*Irrevocably Committed
to Foreign Trade*

Board of Equalization Representatives Messrs. [redacted]

Comments and Recommendations

PROTESTED ITEM:

Sale of the good ship "[redacted]" not reported \$60,000

CONTENTIONS OF PETITIONER:

The sale in question is an exempt export under the provisions of Article I, Section 10 of the United States Constitution.

REPORT ON FACTS:

The protested item constitutes sale of an old [redacted] vessel to a Mexican corporation. The underlying facts for this transaction are set forth in the petition for redetermination as follows:

"[redacted]" was sold by Taxpayer to [redacted] Mexico, for \$60,000 in cash. Authority to make the sale was requested in an Application to the Maritime Administration (Form MA-29) dated July 23, 1965, and executed by Taxpayer and the Buyer. Authority to make the sale was granted by the Maritime Administration in Transfer Order No. [redacted] on [redacted]

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August 16, 1965. Taxpayer surrendered its Certificate of Enrollment and License on September 9, 1965, to the Office of the U. S. Collector of Customs, San Pedro. Following such surrender, the Buyer paid the full purchase price to Taxpayer, and Taxpayer delivered to the Buyer its Bill of Sale of Enrolled Vessel (Customs Form 1342).

"In conjunction with the sale, Taxpayer filed with the Collector of Customs a Declaration of ' [REDACTED] ' as an export. Taxpayer's copy of the Declaration bears the date of September 10, 1965, which was stamped in a box on the form under the heading 'Customs Authentication'. The Declaration lists Taxpayer as the exporter and describes the Buyer as the ultimate and intermediate consignee. It also specifies [REDACTED] Mexico, as the port of unloading and as the place and country of ultimate destination. Finally, it gives a physical description of the vessel as an object of export and contains a reference to the Transfer Order of the Maritime Administration referred to above. The Declaration is signed on behalf of Taxpayer by its President."

There is no evidence that the purchaser is a resident of California or that it has ever conducted any business in this state. While the agreement called for the removal of the vessel from this country, subsequent investigation disclosed that it has not yet left California waters. When title was transferred, the purchaser placed a Mexican crew on board and removed the vessel to a Long Beach shipyard for repairs. After an indeterminate period, it was apparently decided that repair of the vessel would be too costly. At last report, the Lumberlady was berthed at a salvage yard in San Pedro.

CONCLUSION:

The disposition of this petition is governed by the case of Matson Navigation Co. v. State Board of Equalization, 136 Cal.App.2d 577, which held that the sale and delivery of a steam ship of American registry to a corporation which is wholly owned by a nonresident alien, which has been organized in a foreign country and which had not done business in this state, irrevocably commits the ship to foreign trade, if not foreign ownership, in view of 46 U.S.C. 883, which prohibits such a ship from thereafter engaging in domestic trade (also see 46 U.S.C. 808). In view of this, the court held that the act of sale itself constitutes "exportation" by severing the goods from the mass belonging to the United States and limiting them to the mass of things belonging to a resident of a foreign country for use wholly outside the United States.

While the vessel in question has not actually left port, this is an incident of foreign rather than domestic commerce. Should the vessel be scrapped or sold to a California customer to be used for some other purpose, the transaction should be classed as an import.

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The ruling is unique with vessels, as was illustrated by the court in considering the board's argument that a vessel, an instrumentality of commerce, could not qualify as an export because "the ordinary articles of commerce exported to foreign countries are consumed there and that the possibility is at least remote that they would ever again be returned." In rejecting the argument, the court concluded as follows:

"This argument seems without merit for certainly there is no legal prohibition against the export of imperishable articles of utility which might conceivably find their way back into domestic use. It is customarily presumed, it is true, that in the ordinary course of events they will not and it is further true perhaps that they do not. Appellant refers to A. G. Spaulding & Bros. v. Edwards, 262 U.S. 66 [43 S.Ct. 485, 67 L.Ed. 865]; and to Richfield Oil Corp. v. State Board of Equalization, 329 U. S. 69 [67 S.Ct. 156, 91 L.Ed. 80], and cites baseball bats and oil as examples of consumable goods. Certainly the possibility that oil once sold as an export will ever again reenter the field of domestic commerce is much more remote than in the case of the baseball bats referred to in the Spaulding case. But it seems to us that in either case, remote though the possibility may be, there still remains a possibility, while in the case of the Matsonia there is none by reason of the Federal prohibition against a vessel once sold into foreign registry ever again engaging in domestic commerce." (Emphasis added.)

The distinction drawn with respect to goods that could conceivably be used for domestic purposes was confirmed in Shell Oil Co. v. State Board of Equalization, which held that such goods are required to be "sent abroad" with "another country as the intended destination."

RECOMMENDATION:

The sales price of the vessel should be deleted from the measure of tax redetermined.

Adjustment to be made by Petition No. 1.

W. E. Burkett
W. E. Burkett, Hearing Officer

APPROVED:

Neil J. Larson
Principal Tax Auditor

4-10-68
Date

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