

Memorandum

335.0089.800

To: Mr. Glenn Bystrom

Date: July 10, 1996

From: Gary Jugum

Subject: Non-Attorney Opinions

I have reviewed your memorandum of August 5, 1987 to District Principal Auditors.

We are in agreement with his conclusion, as follows:

Use of Property by Lessor. If the lessor of mobile transportation equipment, who has elected to report tax liability based on fair rental value, subsequently makes a personal use of the mobile transportation equipment, the use has not been limited to leasing the property as required in Regulation 1661(b)(2). Consequently, use tax is due measured by the purchase price of the mobile transportation equipment. However, the amount of tax previously reported on the lease receipts may be offset against the tax computed on the purchase price. If the mobile transportation equipment is later rented, no additional tax is due. 8/5/87.

Gary Jugum
By MB

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M e m o r a n d u m**335.0089.800**

To: District Administrators

Date: August 5, 1987

From: Glenn A. Bystrom
Principal Tax Auditor

Subject: Lessors of Boats

During recent audits of boat dealers it has been noted that some dealers appear to be advising their customers that if they register with the Board they can purchase a boat for resale for leasing purposes, report the tax on lease receipts and avoid paying the sales tax at the time of purchase. In some cases this is being done when it appears that the boats are actually purchased for personal use. These boats usually range in price from approximately \$35,000 to more than \$150,000. In general, these are boats designed for pleasure use, rather than commercial uses, such as deep sea fishing or towing.

When investigating boats purchased ex-tax for leasing purposes the following tax application applies when the boat is diverted to personal use.

When the boat is 30 feet or more in length, it is considered MTE. Therefore, if the owner/lessor, who has elected to report tax liability based on fair rental value, subsequently makes a personal use of the boat, the use has not been limited to leasing the property as required in Section 6094(d); consequently use tax is due measured by the purchase price of the boat. However, the amount of tax previously reported on lease receipts may be offset against the tax computed on the purchase price. If the boat is later rented, no additional tax is due.

When the boat does not qualify as MTE, the personal use of the boat will have slightly different tax results. If the owner/lessor has elected to report tax based on rental receipts and subsequently makes a personal use of the boat, other than incidental use, the use tax is due measured by the purchase price of the property. The lessor may offset the amount of tax previously paid to the board with respect to rentals of the property against the tax due. If the credit is less than the tax, the difference must be paid with the return. No additional tax is due unless the boat is rented again; at that time tax is due on the rental receipts. However the amount tax paid, when the boat was converted to personal use, may be offset against the liability for tax on subsequent rentals of the boat.

In audits or investigations of boat dealers and purchasers claiming that boats were purchased for leasing, a diligent effort should be made to establish whether the retailer took the resale certificates from the customers in good faith. If it is established that the resale certificates were not taken in good faith, the retailer should be held liable for the sales tax on the sale of the boats and consideration should be given to assessing a penalty. In those case where the certificate is taken in good faith, a TT-1164 should be prepared and investigated by the appropriate district.

If you have any questions regarding this matter please let me know.

G. A. Bystrom

GAB:gjm
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cc: Mr. R. Nunes
Mr. Les Sorensen
Headquarters Audit Supervisors