

Petitioner's Contention

A. The petitioner contends that the vessel was purchased for and leased for use in interstate commerce, therefore, its use is exempt from the imposition of use tax in accordance with Revenue and Taxation Code Section 6368.1.

Summary

The petitioner purchased (vessel) on or about April of 1983. The vessel is a 145 foot boat that is specially equipped for the cleanup of oil spills on the open sea and the transporting of that oil to shore. It deploys a boom around the circumference of the oil spill to contain it, then skims the oil off the water, separates out the water, and places the oil into holding tanks on the vessel. The vessel then transports the oil to the shore for off-loading. There is a crew on the payroll 100 percent of the time. The vessel is used for training its crew. When not in the actual operation of cleaning up oil spills, the vessel is maintained in a state of readiness 24 hours a day, seven days a week. See attached exhibit A page 1.

Petitioner entered into a bare boat charter agreement with on April 4, 1983, for a term of five years. The vessel was to be used in connection with the activities of 's operations. On that same date entered into an operating agreement with which was to actually operate the vessel. is a cooperative comprised of 13 major oil companies and the City of California. 's service is that of providing oil spill cleanup to offshore oil drilling rigs and operating tankers.

The first year of the vessel's operation was examined. During that year the vessel was moored, in a state of readiness, at CA Harbor. The vessel was used to clean up oil spills approximately nine times during that year. It remained moored at the pier the remainder of the time. The cleanup activities that the vessel conducted during that year were accomplished at a distance of no less than 3.6 nautical miles from the mouth of CA Harbor. Some of the cleanup activities were conducted in international waters

The Sales and Use Tax Department's (Department) position is that the vessel does not carry cargo in interstate or foreign commerce. The Department stated that the oil collected by the vessel is not being transported in interstate or foreign commerce,

therefore, the vessel's use is appropriately taxed.

The petitioner's representative argued that Sales and Use Tax Annotation 600.0120 supports his contention that the vessel's use is exempt, since it allows that all listing, handling, assisting, loading, and unloading cargo or property to or from vessels qualifies as a use in interstate commerce. He indicated the annotation also allows that aid, assistance, or salvage of distressed, stranded, or sunken vessels in interstate or foreign commerce is an exempt use. He argued the basic distinction running through all of the foregoing definitions contained in the annotation is whether or not the use is in the transportation of either the vessel or its cargo or passengers in interstate or foreign commerce.

The petitioner's representative stated the cargo the vessel hauls is the recovered oil that either leaks from an offshore drilling operation or a punctured tanker. According to him, a punctured or leaking hull of an oil tanker is a "distressed" vessel which is "assisted" when the oil spill is cleaned up by the vessel and the work certainly involves the "lifting, handling" and "loading" of oil "cargo" of the tanker, part of which is leaked over the surface of the ocean.

The petitioner's representative argued, the vessel's functional use during the first year it was owned by the petitioner was entirely in interstate commerce. He stated that the vessel sails into international waters and collects spilled oil, separates it from the water, and brings it on shore for refining. That oil, the petitioner's representative stated, is the cargo that is involved in interstate/foreign commerce.

He argued the very nature of the special purpose vessel is prima facia evidence of its use qualifying for the exemption. The use of the vessel is, he said, analogous to the use of a fire engine. He suggested that no one would require a log of the use of a fire engine to determine if it was used as a school bus or a grocery truck. This special purpose vessel, like a fire engine, is designed for only one purpose and when not used for that purpose it is maintained in a state of readiness to be available when an emergency arises.

Analysis and Conclusions

An excise tax has been imposed on the storage, use, or other consumption in this state of tangible personal property. See Revenue and Taxation Code Section 6201. Every person storing, using, or otherwise consuming in this state tangible personal

property purchased from a retailer is liable for the tax. See Revenue and Taxation Code Section 6202. The use tax becomes due at the time the storage, use, or consumption first becomes taxable. See Revenue and Taxation Code Section 6291.

Revenue and Taxation Code Section 6009 defines "use" to include the exercise of any right or power over tangible personal property incident to the ownership of that property. Further, use tax applies to any property purchased for storage, use, and stored, and used in this state. However, use tax does not apply to property purchased for use and used in interstate or foreign commerce prior to its entry into this state, and thereafter used continuously in interstate or foreign commerce both within and without California and not exclusively in California. Property purchased outside the state that is brought into this state is regarded as having been purchased for use in California, if the first functional use of it is in California. When the property is first functionally used outside of this state, the presumption is that it was purchased for use in this state if it is brought in within 90 days of purchase. That presumption can be overcome if the property is used more than half the time of the first six months outside this state. Functional use is defined as use for the purpose for which the property was designed. See Sales and Use Tax Regulation 1620(b)(1) and (b)(3).

The Board has long held that standby for use is a use in itself. The vessel was, like a fire engine, designed for a specific function. That function includes the maintenance of the vehicle/vessel in a state of readiness. It was reasonably used for the training of the crew to operate it. The vessel is manned and maintained in a state of readiness which state/standby is a part of the functional use of the vessel. In addition, the term "use" is defined to include storage. The vessel was used outside the continental limits of the United States for at the most 9 times. The remainder of the time, it was moored (stored) at the pier in California. For the first six months it was owned, according to the records available, the vessel picked up spilled oil outside the United States on four days. Therefore, it was clearly used more than one-half of the time during the first six months it was owned maintained in a state of readiness, and stored for use during that time in this state. Therefore, its use, i.e. storage/standby, is taxable.

The petitioner's representative argued that the Sales and Use Tax Annotation 600.0120 supports his position that the activities in which the vessel is involved, cause its use to be exempt. That annotation requires that the vessel carry cargo. The spilled oil is not cargo when it covers the water after being leaked by a platform

and it ceases being cargo when it is leaked by a tanker. The vessel is not assisting a distressed vessel it is cleaning up a mess that it has made. Other vessels come to the aid of the leaking vessel if such aid is needed such as tug boats. Finally, the oil is being delivered in this state by a vessel that originated in this state.

If you accepted the argument that the vessel's use meets the requirements established in Sales and Use Tax Annotation 600.0120, the fact remains that the vast majority of time the vessel is being used (stored/standby), it is being used in this state and, for the reasons stated above, that annotation's tenets are not relevant to the outcome of this case.

In addition to the foregoing, there is a question of whether the bringing in of spilt oil is the importation of that oil. Is that an activity associated with foreign commerce? We think not. The term export as used in the Constitution generally means the transporting of goods from this to a foreign country. Conversely, importing means the bringing of goods from a foreign country to this country. It does not mean simply a carrying out of the country or into the country, because no one would speak of goods shipped by water from San Francisco to San Diego as exported (or imported) although in the voyage they were carried out of this country. See Shell Oil Co. v. State Board of Equalization (1966) 64 C.2d 713, 719. The underlying theory in the protection afforded foreign commerce is that the commerce be conducted with a foreign country. See Alaska v. Arctic Maid (1961) 336 U.S. 199, 202. In this case there is no foreign country involved when the vessel scavenges oil off the top of the water when an oil rig causes a spill, and likewise when a tanker leaks the oil and a similar act is completed. In neither instance is there an intent to put the spilt oil into the stream of commerce from a foreign country. On that basis, as well as the basis above cited, the petition should be denied.

Recommendation

Deny the petition.

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Exhibits attached JA

May 23 1972
Date