

STATE OF CALIFORNIA

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Executive Director

November 5, 1996

Re:

Dear

This is in response to your letter dated September 17, 1996, in which you ask whether the exemption for watercraft explained in Sales and Use Tax Regulation 1594 would apply to your use of a vessel used to clean oil spills. You state:

"This letter is to seek your advice regarding the applicability of Regulation 15[9]4 Sales and Use Tax Regulation Item (a)(1) tax exemption for watercraft. We have entered into a transaction with Marco Marine of Seattle to build a 48['] vessel to be completed and scheduled to be delivered to our offices in Concord, California on or about October 31, 1996. of does not have a license to do business in California and is not required to charge sales tax to our purchase price.

"We believe that Regulation 15[9]4 section (a)(1) tax exemption is applicable to this vessel because it will be used in interstate commerce by aiding vessels delivering primarily Alaskan crude oil into California. The vessel will be hired by subscription member companies for oil spill response."

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We assume that the 48 foot vessel has very limited capacity to store and transport spilled oil. We assume the vessel's primary purpose is to place "booms" in the water to encircle an oil spill thereby keeping it contained until it can be pumped from the surface of the ocean to another vessel. Further, we assume that the vessel will be moored in a California port in standby condition ready for quick response to assist in oil spill cleanup. Our understanding is that these types of vessels are actually used for oil spill cleanup only a few times each year.

The relevant tax under these facts is use tax. Use tax applies to the use in California of tangible personal property purchased from a retailer for use in California unless specifically exempted by statute. (Rev. & Tax. Code § 6201, 6401.) The use and storage of a watercraft is exempted from tax if the watercraft is used in interstate or foreign commerce to transport property or persons for hire. (Rev. & Tax. Code § 6368.) Sales and Use Tax Regulation 1594 explains section 6368 and provides that tax does not apply to the use of watercraft when such watercraft is used either exclusively in interstate or foreign commerce involving the transportation of persons or property for hire or both in interstate or foreign commerce and intrastate commerce provided the principal use of the watercraft is transportation for hire in interstate or foreign commerce. (Sales and Use Tax Reg. 1594(a)(1).)

Storage of the vessel in California is a use subject to tax. (Rev. & Tax. Code § 6201.) An item (such as this vessel) in standby service is used for use tax purposes. (See, e.g., Bus. Taxes L. Guide Annot. 570.0380, 11/7/86.) The principal use of the vessel is remaining in standby for oil cleanup which use does not qualify for the watercraft exemption.

Although a vessel that carries oil from Alaska to California is involved in interstate commerce when the spill occurs, the oil loses its character as property being transported for hire in interstate commerce when it is lost from the vessel at sea. You are hired to clean up the oil spill, not for hire in interstate commerce. Thus, for this reason, your use of the vessel does not satisfy the requirements for the watercraft exemption and is subject to tax.

November 5, 1996

If you have any further questions in regard to the matters contained herein, please do not hesitate to write again.

Yours very truly,

Anthony I. Picciano
Tax Counsel

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cc: