

600.0202

3/13/96

STATE OF CALIFORNIA
BOARD OF EQUALIZATION
APPEALS SECTION

In the Matter of the Petition)	
for Redetermination Under the)	DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)	
)	
)	No.
)	
<u>Petitioner</u>)	

The Appeals conference in the above-referenced matter was held by Donald L. Fillman on December 4, 1995 in California.

Appearing for Petitioner:

Appearing for the	
Sales and Use Tax Department:	Ivy D. Goldfisher, Senior Tax Auditor

Nature of Transaction:	Use tax liability on a vessel purchased for use in California.
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Protested Item

The protested tax liability for the use tax liability on a vessel purchased on or about September 26, 1991, for use in California, is measured by:

<u>Item</u>	<u>State, Local and County</u>
Actual cost of vessel	\$122,500

Petitioner's Contentions

1. The vessel purchased by petitioner was entitled to the exemption for watercraft "used in commercial deep sea fishing operations outside the territorial waters of this state", as provided in Regulation 1594(a)(2).

2. Petitioner relied on advice from Board employees when it determined that it qualified for this exemption.

Summary of Petition

Petitioner purchased a vessel in Alameda County on September 26, 1991, from a private party. Petitioner stated that the vessel was kept at Marina Village, Alameda County until 1/23/92. It was docked at Ballena Isle Marina, Alameda County, from 2/1/92 through 3/12/93 undergoing repairs. In a telephone conversation on March 9, 1993 with the compliance staff, it was indicated that the vessel had only been used for 10 hours since purchase, and could not be immediately placed in commercial fishing service because of low water in the marina. Petitioner stated that commercial fishing began on June 3, 1993, at Lake Tahoe, from the vessel's permanent mooring location at Tahoe Keyes Marina, California.

Petitioner provided fishing logs from June 3, 1993, through September 4, 1994, showing the geographical coordinates of the vessel's activity in Lake Tahoe. The logs do not indicate the amount of time during which the vessel was located in any specific portion of the lake, but petitioner offered as proof his "recollection" that most trips spent the majority of the time in Nevada waters, or at least over three miles from California's shore.

The logs provided were limited to those which showed a location at least 3 miles from any Lake Tahoe shoreline, as that was what petitioner understood the audit staff wanted. However, since the majority of the lake is within California's borders, those logs which were provided show most locations to be within California's borders, even though over three miles from shore.

Petitioner stated that it had contacts with Board employees from the time of purchase, and was led to believe that the purchase would be exempt if petitioner used it as anticipated, including in Lake Tahoe. Petitioner never received

any advice in writing, and does not know with whom the conversations were held.

Analysis and Conclusions

Revenue and Taxation Code section 6368, and Regulation 1594, provide an exemption from sales and use taxes for watercraft purchased for use "in commercial deep sea fishing operations outside the territorial waters of this state by persons who are regularly engaged in commercial deep sea fishing if the principal use of the watercraft occurs outside the territorial waters of this state." (Reg. 1594(a)(2).)

Listed below are the items that petitioner must prove to establish that the requested exemption will apply:

1. Petitioner was regularly engaged in commercial deep sea fishing.
2. The watercraft is used in commercial deep sea fishing operations outside the territorial waters of California.
3. The principal use of the watercraft occurs outside the territorial waters of California.

All of the commercial fishing which petitioner presented to establish (a) that petitioner was "regularly engaged" in commercial deep sea fishing, and (b) that the watercraft's "principal use" occurred "outside the territorial waters of this state", occurred in Lake Tahoe, and the permanent mooring location was in California. Nearly all of petitioner's fishing trips included some fishing in California waters, whether within or without a three mile distance from the California shore.

The immediate question that comes to mind is whether any fishing within Lake Tahoe could be defined as "deep sea fishing operations outside the territorial waters of this state", as those terms are used in the Sales and Use Tax Law. It appears that this case is "a case of first impression", in that I am unaware of any prior attempts to use this exemption for fishing that did not take place in the Pacific Ocean off the western coast of California.

It is my opinion that Revenue and Taxation Code section 6368 and Regulation 1594 were intended to apply only to

commercial deep sea fishing off the western coast of California. My research does not turn up any cases where the terms "territorial waters" and "deep sea fishing" have been used in reference to freshwater inland lakes.

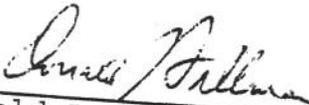
Although the term "sea" can include inland waters if the context so implies, the general definition is "a great body of salty water that covers most of the earth", and its most common synonym is "ocean". (Webster's Seventh New Collegiate Dictionary.)

"Territorial waters" is a term which has evolved in international law, in a context of various degrees of control of ocean waters close to a country's coast. These waters would otherwise be free for all countries to use without hindrance. The term is generally used to define the waters which extend three miles "oceanward" from a country's coast, in this case, the western coast of California. The Federal Government has dominion and control over these waters, as well as the "submerged lands" and oil and mineral rights beneath these lands, except to the extent that the Federal Government grants some or all of these rights to the contiguous state. (See the Submerged Lands Act of 1953, and United States v. California (1947) 332 US 19, 91 L.Ed. 1889.)

Although I do not believe that the exemption applies to an inland lake, I do wish to address briefly the proof presented by petitioner concerning the locations of the vessel's principal use. The evidence presented does not establish where "the principal use of the watercraft" occurs, or even that its principal use occurs outside of California's boundaries, i.e., within Nevada's boundaries. Petitioner's logs do not contain sufficient information to make that determination.

Recommendation

It is recommended that the tax be redetermined without adjustment.


Donald L. Fillman, Staff Counsel
dfm

March 13, 1996
Date