State of California

600.0063

Board of Equalization
Legal Division-MIC: 82

Memorandum

To : Mr. John Emmett
Tax Compliance Supervisor

Date: October 23, 2000

From : Janice L. Thurston
Senior Tax Counsel

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Subject:

This is in response to your August 23, 2000 memorandum to the Legal Division in which you requested a legal opinion as to whether --- purchase of a fishing vessel from --- and ---, for the sum of $12,000.00 in order to obtain title to a vessel with a vessel crab permit, so that --- could transfer the vessel crab permit to another vessel owned by him, was the purchase of a vessel subject to tax. In your memorandum, you state:

"1) The contract of sale indicates the consideration of this purchase was for the sole purpose of transferring a crab permit from one vessel to another.

"2) Contact with the California Department of Fish and Game has confirmed it is customary practice for a vessel Captain to transfer title of a vessel in order to obtain a permit. A permit can only be transferred between vessels under the same captain; they cannot be sold or transferred between parties.

"3) The consideration in this case was $12,000.00 solely for the purpose of obtaining the crab permit. The vessel itself is located in a scrap yard and is considered of 'no value'.

"4) The terms of the contract were completed without 'first functional use'. Coast Guard records have confirmed that title of the vessel has transferred back to the original owner. We confirmed with the Department of Fish and Game that, during the brief ownership period, the crab permit was transferred to another vessel the taxpayer owned."

DISCUSSION:

What is a Dungeness Crab Vessel Permit?

Under California law, persons may not use a vessel to obtain Dungeness crab for commercial purposes, "unless the owner of the vessel has a Dungeness crab vessel permit for that

vessel . . . ." (Fish & G. Code § 8280.1(a).) To protect the Dungeness crab fishery, the Legislature limited the number of vessels participating in the fishery to take Dungeness crab, by requiring those vessel owners to obtain and possess a permit for the vessel; the issuance of permits were limited to persons owning vessels qualifying under Fish and Game Code section 8280.1. (Fish & G Code § 8280.) Vessels generally qualified if the owner had a commercial fishing license in specified crab seasons prior to 1995 and used the vessel for a number of landings in those seasons. In other words, permits were issued to persons who had used the vessel to take crab by traps for commercial purposes in specified crab seasons.

The law prohibits the transfer of a Dungeness crab vessel permit, except as specifically provided in Fish and Game Code section 8280.3. Upon the sale of the vessel, the owner of the vessel must transfer the permit to the purchaser unless, with the approval of the Department of Fish and Game, the owner retains the permit to be placed on a vessel to be purchased. (Fish & G. Code 8280.3 (a)(1).) The owner of a vessel to whom the Dungeness crab vessel permit has been issued may transfer the permit to a replacement vessel of the owner. The owner must be the record owner of both vessels in order to transfer the permit to the replacement vessel.[1]

The permit is an authorization for a vessel owner to use the specific vessel to take crab; it is one of the bundle of rights of vessel ownership, an incident of vessel ownership which cannot be sold separately from the transfer of the vessel. (Cf. 81 Ops.Cal.Atty.Gen. 338 (1998) opining that a commercial salmon vessel permit does not constitute personal property of the permit holder so as to allow its sale without transfer of the vessel owned by the permit holder.)

Application of Tax:

California law imposes a sales tax on the retail sale of tangible personal property in California (Rev. & Tax. Code § 6051) and when sales tax does not apply, imposes a use tax on the use of tangible personal property purchased from a retailer for storage, use or other consumption in California (Rev. & Tax. Code §6201), unless specifically exempt or excluded by statute. Use tax applies to the use[2] of a vessel purchased from a person not required to hold a seller's permit by reason of his or her sales of vessels (Rev. & Tax. Code §6275, 6283, Reg. 1610), but no sale or use tax is imposed on the sale of intangible personal property or on the performance of services (Rev. & Tax. Code §§ 6006, 6007). The California Supreme Court has (1) rejected the contention that the "true object" test of Regulation 1501 (pertaining to whether the transfer of tangible personal property is incidental to a service) renders a sale of a physical object exempt from taxation whereby the object is purchased or acquired primarily for its intellectual content (*Simplicity Pattern Co. v. State Bd. of Equalization* (1980) 27 Cal.3d 900); and (2) rejected the contention that documents may not be taxed if the primary purpose of the sale was to transfer intangible or

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[1] Fish and Game Code section 7601 defines an owner as follows:

> "'Owner' or 'vessel owner' means the person or persons designated as the registered owner of a vessel on a certificate of documentation issued by the United States Coast Guard or on a copy of the vessel registration issued by the vessel registration agency of the state where the owner is a resident. For purposes of this section, the vessel registration agency in California is the Department of Motor Vehicles."

[2] "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of the property. (Rev & Tax. Code §6009.)

intellectual content embodied in the documents (*Navistar Internat. Transportation Corp. v. State Bd. of Equalization* (1994) 8 Cal.4th 868).

--- purchased the vessel for its own sake; he had to become the owner of the vessel formerly owned by the ---, with title to the vessel vested in him as shown on U.S. Coast Guard or DMV records, in order to be able to transfer the crab vessel permit to another vessel owned by him. Although --- purchased the vessel because he was most interested on one of the rights of vessel ownership, the Dungeness crab vessel permit, he in fact obtained title to the vessel for consideration of $12,000.00. The purchase of the vessel was not incidental to the performance of a service, nor was there a separate and distinct transfer of intangible personal property, and the purchase of the vessel is subject to tax.

JLT/cmm

cc: Consumer Use Tax (MIC:37)