STATE OF CALIFORNIA
BOARD OF EQUALIZATION

June 10, 1976

In the Matter of the Claim for Refund of State and Local Use Tax; Claimant.	DECISION AND RECOMMENDATION

The above-entitled matter came on regularly for hearing on Thursday, May 6, 1976 in San Diego, California. Robert H. Anderson, Hearing Officer.

Appearing for Claimant:

Appearing for the Board: Bob Bender
San Diego District Compliance

Claim

claims a refund of $498.42 paid pursuant to a determination issued on April 4, 1975.

Contentions

The use tax paid under protest was assessed on a vessel that was purchased for use as a commercial fishing vessel and was used only as a commercial fishing vessel.

Summary

On or about June 11, 1974, purchased the vessel from a for $7,100. The is a wood hull diesel powered vessel that is 34 foot long, 11.2 feet wide with a gross tonnage of 11.2.

The vessel is documented and licensed for commercial fishing. has a commercial fishing license and in between going to school he uses the vessel exclusively for commercial fishing purposes. He stated that about 95 percent of his gross income is from the sale of his catch which, in 1975, was $22,970.

claims that his use of the vessel exempts him from use tax liability under section 6368 of the Sales and Use Tax Law.

Conclusions

The record indicates that primary catch was abalone during the period in question which is the first six months of operations after acquiring the vessel.

Section 6368 of the Sales and Use Tax Law provides, in part, as follows:

> "There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this state of watercraft for use in interstate or foreign commerce involving the transportation of property or persons for hire or for use in commercial deep sea fishing operations outside the territorial waters of the state...." (Underlines added.)

The foregoing section is a tax exemption and the courts have held that statutes granting exemption from taxation must be reasonably, but nevertheless strictly, construed against the taxpayer. Santa Fe Transp. v. State Board of Equalization (1959) 51 Cal. 2d 531; Good Humor Co. v. State Board of Equalization (1957) 152 Cal. App. 2d 879; Luer Packing Co. v. State Board of Equalization (1950) 101 Cal. App. 2d 99.

The statute requires that the vessel be used in commercial deep sea fishing operations outside the territorial waters of the State. This is an express provision and could not be more clear. The territorial waters of the State extend from the shoreline of the mainland and the offshore islands to a point three miles away from the shore. Abalone fishing is done in waters that are relatively shallow and close to the shoreline of the mainland and offshore islands. Thus, although is a commercial fisherman and uses the vessel in commercial fishing operations, it is not used outside the territorial limits of the State, and therefore, the test for the exemption is not met.

A reasonable but nevertheless strict construction of the exemption statute dictates the conclusion that use of the vessel does not qualify for the exemption.

Recommendation

Claim for refund be denied.

Robert H. Anderson

Robert H. Anderson, Hearing Officer

JUN 4 1976

Date

Reviewed for Audit:

Principal Tax Auditor

Date