600.0205

November 2, 1987

Gary J. Jugum

This is in response to your memorandum of July 29, 1987.

Taxpayer has filed a petition for redetermination of use tax assessed on his purchase of the vessel . We understand that dives for sea urchins and does some coral diving. The majority of his fishing is done within three miles of the California coast, but some fishing is done outside the territorial waters of this state.

Revenue and Taxation Code section 6368 provides an exemption for watercraft for use in "commercial deep sea fishing operations outside the territorial waters of this state."

You suggest that the circumstances of this case are similar to and . The Board held in that case that taxpayer did not qualify for exemption. You suggest that the difference between the case and the case is that all of the fishing done by was within California waters, while 29 of 128 trips were to international waters.

The Board concluded in the case that taxpayer did not qualify for exemption because taxpayer did no fishing at all "outside the territorial waters of this state." It was true in that case that taxpayer transited international waters to arrive at California territorial fishing grounds. There was no need, however, to take into consideration travel time since there were no qualifying fishing operations outside the territorial waters of this state.

In the case, it appears that taxpayer does engage in deep sea fishing operations outside the territorial waters of this state. Accordingly, it is appropriate to include travel time in determining whether the principal use test is met.

GJJ:sr

cc: Mr. Donald J. Hennessy
Mr. W. E. Burkett