

Oakland - Auditing (CPM)

August 1, 1973

Tax Counsel (DJH) - Headquarters

We are replying to your memorandum of June 6, 1973 regarding a contract for shipwright carpentry and related services. The lumber used by _____ (taxpayer) was considered as sold to the United States Government, which is the time charterer of the ships involved.

The work performed by taxpayer falls into four general categories:

1. Blocking and bracing of vehicles and equipment;
2. Sheathing ammunition and building false decks;
3. Building acid boxes on decks;
4. Building wooden catwalks over and across cargo on deck.

In each category, the dunnage and other lumber is shored and tied together, but is never attached to the ship. Such lumber would generally be removed at the end of the voyage. You request our opinion as to whether the materials used in these shipwright services are self-consumed by the taxpayer, sold to the United States Government, or become component parts of the watercraft per regulation 1594.

In our opinion, the contract for shipwright carpentry and related services is governed by Regulation 1630, Packers, Loaders, and Shippers. The taxpayer, who is not the seller of the

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goods shipped, has no express contract with the United States Government for the sale of the lumber. The contract contains no title clause, but is only for services. Accordingly, there is no sale of the lumber or other materials to the United States Government.

We do not believe the watercraft exemption is applicable. We find this situation to be within California Tax Service Annotation No. 600.0580 which states that, "Lumber used in the erection of platforms, self-shorings and blocking on vessels for the purpose of increasing cargo capacity and prevention of cargo shifting, is not exempt under the watercraft exemption." The lumber is not affixed or attached to the ship so as to become an integral part thereof. The lumber is temporarily on board in connection with the particular placement of a cargo. When the cargo is removed, so is the lumber. The lumber's use is in connection with the loading of a particular cargo, not with the operation of the ship in general. We note that a 1956 publication of the _____ in defining the limits of the watercraft exemption, states that, "Lumber used for dunnage and other temporary nonaffixed uses would be taxable."

We believe that the use of the lumber in question is, as described in Regulation 1630, to preserve and protect goods during shipment or as containers, or parts of containers, of the goods shipped. The sale of such lumber to the taxpayer is a taxable retail sale; if resale certificates are given, use tax applies to cost.

While the above conclusion seems rather straight-forward as to the first three categories of services listed above, we realize that arguably the fourth category, catwalks, is outside the scope of Regulation 1630. Nevertheless, we believe that the temporary use of the catwalks is so closely allied to the placement and loading of a particular cargo, that it must be seen as part of the contract for shipwright services, and not as a sale of a fabricated catwalk.

We recognize that the above conclusion in regard to the watercraft exemption is contrary to California Tax Service Ann. No. 600.0480 regarding grain fittings. We believe that Ann. No. 600.0480 reaches an incorrect conclusion; we are taking steps to have it removed from the tax service and it should no longer be considered a precedent.

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We understand that conclusions other than the above, particularly in regard to the watercraft exemption, were applied to taxpayer's operation in previous audits. It may, therefore, be necessary for you to consider giving the above only prospective application

DJH:smb

cc: T. P. Putnam
E. L. Rigby
R. Nunes
J. Murray