

Amend Revenue and Taxation Code Section 6248 of the Sales and Use Tax Law to make a technical clarification to the repair, retrofit and modification exception related to the 12-month rebuttable presumption for vessels purchased outside this state. (Technical)

Source: Legislative Section

Current Law

Under existing law, Revenue and Taxation Code Section 6248 of the Sales and Use Tax Law provides a rebuttable presumption that any vehicle, vessel, or aircraft purchased outside California that is brought into this state within 12 months of purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax. The law provides an exception, however, for vehicles, vessels and aircraft brought back into California within the first 12 months of ownership for the purpose of repair, retrofit, or modification (RRM). If the RRM meets specified criteria, the vehicle, vessel or aircraft will not become subject to use tax solely on the basis that it was brought into California within the first 12 months of ownership. One of these criteria is that, for vessels, the RRM be conducted by a repair facility that holds an appropriate permit issued by the Board of Equalization (BOE) and is licensed to do business *by the county* in which it is located. (This criteria was added by BOE-sponsored AB 1547 (Ch. 545, Stats. 2009) in order to clarify that the RRM must be performed by a legitimate repair facility, otherwise taxpayers could regularly purchase minor parts or accessories and make their own repairs or modifications over an extended period of time while storing the vessel in California and avoiding California use tax).

Most local jurisdictions in California require businesses to hold a business license. However, when a business is located within the city's jurisdiction, generally, if a business license is required, the city, rather than the county, licenses the business. Also, in some instances, a business located within an unincorporated area of a county, is not required to hold a business license at all (such as in Shasta County, Santa Clara County, and San Diego County). Consequently, the specific wording of the statute requiring that the repair facility be licensed to do business *by the county* in which it is located is not always fitting. This could inadvertently subject a purchaser to use tax when the purchaser brings a vessel purchased outside this state back into California within the first 12 months of ownership and uses a repair facility that either is not required to hold a business license, or has an appropriate business license, but not one issued by a county.

This Proposal

This proposal would clarify that as long as the repair facility has a permit with the BOE and is licensed by the city, county, or city and county, if so required, the taxpayer's vessel purchase would meet the criteria for the exception related to

the 12-month rebuttable presumption, and would not be subject to use tax (assuming all other requirements not pertinent to this discussion are met).

Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) There shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state on or after the effective date of this section, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occurs:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code. For purposes of this section, a closely held corporation or limited liability company shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) If purchased by a nonresident of California, the vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section shall not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) Notwithstanding subdivision (a), any aircraft or vessel brought into this state exclusively for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the board and, is licensed to do business by the city, county, or city and county in which it is located if the city, county, or city and county so requires, or, in the case of an aircraft, performed by a repair station

certified by the Federal Aviation Administration or a manufacturer's maintenance facility.

(f) The presumption set forth in subdivision (a) may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.