

Memorandum

395.0081

To : Mr. Vic Anderson
Supervisor, Petitions Section
(MIC:38)

Date: November 22, 1993

From : Elizabeth Abreu
Tax Counsel

Subject: **S--- E---, Inc.**
SB -- XX-XXXXXX-010

This is in response to your memorandum dated September 16, 1993, in which you state:

"We are requesting a legal opinion on whether the ownership of a vessel resulting from a property settlement in divorce constitutes an involuntary transfer.

"L--- and K--- F--- (husband and wife) each owned 50% of the stock of S--- D--- Inc. (SDI). L--- F--- petitioned for divorce and a marriage settlement agreement was signed by Mr. and Mrs. F--- on 2-11-8X. On 2-17-8X the court approved the marriage settlement agreement and ordered the F---'s to comply with all its executory provisions.

"One provision of the agreement required that Mr. F--- purchase a vessel from SDI at the current loan balance. Mr. F--- complied with the provision and purchased the vessel through his corporation, S--- E--- Inc. (SEI). Is the transfer of the vessel from SDI to SEI exempt from use tax as an involuntary transfer?"

In Annotation 395.2420 the husband owned and operated two places of business, each of which was community property. Upon a divorce and property settlement agreement, the husband took one of the businesses as his separate property and the wife took the other business as her separate property. We concluded that the transaction was analogous to a distribution of partnership assets upon dissolution and that no tax was due.

Tax Tips Pamphlet No. 23, "Occasional Sales of Vehicles, Vessels, and Aircraft," includes ownership as a result of a property settlement in a divorce in the definition of an involuntary transfer. (See page 20, Pamphlet No. 23.) Involuntary transfers are not regarded as sales and purchases.

The transfer in this case is not analogous to a partnership distribution because the vessel was not owned by the community but by SDI, which is a separate entity and a corporation. Nor was the transferee, SEI, a member of the community.

Furthermore, this was not an involuntary transfer. The provision regarding marriage settlement agreements in the Tax Tips Pamphlet only applies to a transfer of community property to a spouse as his or her separate property. Any other interpretation would allow spouses to avoid tax on transactions that are clearly taxable. For example, suppose the spouses owned a hardware store as community property. Pursuant to their court approved marriage settlement agreement, the spouses sold the store and divide the proceeds. The mere fact that the sale was pursuant to a marriage settlement agreement does not permit the spouses to escape taxation on the sale.

In this case, community property was not transferred to the husband as his separate property. Rather, one corporation sold a vessel to another corporation. If this sale was not made pursuant to a marriage settlement agreement, it would clearly be taxable even though the husband owned 50 percent of the stock in one corporation and all of the stock in the other. The marriage settlement agreement does not change the result. The parties could have structured the property settlement in a way to avoid tax but chose not to.

EA:cl

Enclosure