1985 Conn. Op. Atty. Gen. 184 (Conn.A.G.), 1985 WL 258951

Office of the Attorney General

State of Connecticut
Opinion No. 85-048
July 29, 1985

***1 BOATS - SALES PRACTICES - SHIPS TAXATION AND REVENUE - WORDS AND PHRASES**

An out-of-state resident who purchases a vessel from a marine dealer in the State of Connecticut is exempt from paying the sales and use tax only if the vessel is immediately and promptly sailed or transported out of the state upon the physical delivery of the vessel.

Honorable John G. Groppo
Commissioner
Department of Revenue Services
92 Farmington Avenue
Hartford, CT 06105

Dear Commissioner Groppo:

You have sought our opinion concerning the exemption provided in Conn. Gen. Stat. § 12-412(32) to the sales and use tax imposed by Chapter 219 of the Connecticut General Statutes. Specifically, you inquire whether the following transaction would be exempt:

A, who is an out-of-state resident, purchases a vessel from a marine dealer in the State of Connecticut in November, 1983. Title to the vessel passes to the out-of-state purchaser in November, 1983. However, delivery of the vessel to the purchaser occurs in April, 1984 for use outside of Connecticut.

At the outset, we note that you have posed what appears to be a hypothetical question. Generally, it is the policy of this office not to render advice on such questions. The opinion may be instrumental, however, in resolving disputes arising in several pending audits. Accordingly, we elect to answer your request.

Conn. Gen. Stat. § 12-412(32) (1985) provides for the following exemption from the sales and use tax imposed by Chapter 219 of the Connecticut General Statutes:

(32) Vessels sold in Connecticut by a shipbuilder or marine dealer to be transported immediately for use out of state. The sale of any vessel as defined in section 15-127 by a shipbuilder or marine dealer in this state, including necessary machinery, equipment and modifications, to a purchaser who is not a resident of this state for use outside this state, provided such vessel shall be sailed or transported from this state immediately following delivery to such purchaser. (Emphasis added.)

The answer to your question hinges on the interpretation given to the words “delivery” and/or “immediately” in the statute. We begin with an analysis of the word “delivery.” Because neither the statutes nor regulations governing your Department define the word, we must rely on the cardinal principle of statutory construction that words be given their plain and ordinary meaning. In construing statutes, Conn. Gen. Stat. § 1-1(a) (1985) provides as follows:

In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly.

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The Connecticut Supreme Court has had reason to define the word "delivery" in another context where there was no specially provided statutory definition:

***2** To deliver is to give or transfer, to yield possession or control of, to hand over. Webster's Third New International Dictionary. It is the physical act of transferring possession. Meyer v. State, 108 Tex. Crim. 77, 83, 299 S.W. 259. It implies a change of custody and necessitates a transfer of possession. Bird v. State, 131 Tenn. 518, 527, 175 S.W. 554. It is a handling over. State v. Fraser, 161 Mo. App. 333, 341, 143 S.W. 545.

Koval v. Liquor Control Commission, 149 Conn. 63, 65, 175 A.2d 358 (1961).

This definition is consistent with the common understanding of the word. Delivery, as commonly understood, is not synonomous with the legal concept of sale or transfer of title. [1] Indeed, Section 12-412(32) itself plainly evinces an intended distinction between sale and delivery. If the words were intended to mean the same thing, the legislature would not have employed the word "delivery" in the final clause of the section but would likely instead have repeated the earlier employed word "sale". [2]

Finally, practical considerations pertaining to the marine trades industry are entirely consistent with this interpretation. Vessels are frequently purchased, and title transferred, well before physical control is — or often can be — transferred.

This may be due to the completion of customizing requested by the purchaser, the completion of seaworthiness preparation by the seller, or the inability for physical delivery to be made because of unsafe or difficult weather conditions.

The only issue remaining before we can answer your question is whether the out-of-state purchaser immediately sailed or transported the vessel out of Connecticut following delivery. You do not specify whether this has happened in your hypothetical question. If it has been so sailed or transported, it is our opinion that the purchaser would be exempt from Connecticut sales and use tax.

In this regard, we would only offer the observation that the word "immediately" should be strictly construed against the taxpayer, consistently with the canon of statutory construction that statutes providing an exemption from taxation must be so construed. Caldor Inc. v. Heffernan, 183 Conn. 566, 571, 440 A.2d 767 (1981). If so construed, there should be little danger that an out-of-state purchaser could avoid taxes properly owed. [3]

Specifically, we would advise that the exemption apply only when the purchaser proceeds, out of the state with the vessel — by motor, sail, trailer or any other means — directly and without unreasonable delay as soon as physical custody is first relinquished by the seller to the buyer after a sale has occurred.

Thus, while a purchaser could, theoretically, delay delivery for a significant period of time following sale and transfer of title, [4] if he were to take physical custody of the vessel any time during that period — for personal enjoyment in Connecticut waters, for example — without immediately transporting it out of the state, the tax on the sale would be immediately due and payable.

Very truly yours,

***3** Joseph I. Lieberman
Attorney General
By: Elliot F. Gerson
Deputy Attorney General

Footnotes

1 Conn. Gen. Stat. § 12-407(2)(a) defines "sale" as "any transfer of title . . . of tangible personal property for a consideration."

2 There is simply no reason at law or in fact to presume that the legislature intended the definition of "delivery" to be affected by any legal fiction of constructive delivery made complete by a mere transference of title. Indeed, since the exemption requires that a vessel be physically removed from the State immediately following delivery, the legislature must have contemplated delivery to mean actual physical delivery and not some concept of constructive delivery. If constructive delivery were sufficient (e.g., by transfer of title), many boat purchasers otherwise entitled to the exemption would find it practically impossible to claim the exemption because their vessels are incomplete and/or immobile at the time of constructive delivery. We cannot presume that the legislature would intend such a result.

This interpretation of the statute is consistent with the legislative history of the exemption. See remarks of Rep. Smoko, 25 Conn. H.R. Proc., pt. 18, 1982 Sess. 6072 (April 29, 1982):

This bill would permit a marine dealer in this state to sell a boat to a purchaser who is not a resident of this state for use outside the state provided such vessel be sailed or transported from this state immediately following delivery to such purchaser. (Emphasis added.)

There is no indication in the legislative record that any legislators intended the exemption to apply only if transportation immediately follow sale or transfer of title.

3 Whether an act was performed "immediately" as required by statute is a question of fact. In Bailey v. Bruneau's Truck Service, Inc., 149 Conn. 46, 56, 175 A.2d 372 (1961), the Court approved a jury instruction which contained the following definition of "immediately":

As used in a statute requiring the driver of a truck, upon bringing it to stop, to place lighted flares "immediately," the word means with reasonable and proper diligence or promptly, under all the circumstances. Gleason v. Baack, 137 Neb. 272, 277, 289 N.W. 349. (Emphasis added.)

See also O'Brien v. Wise Upson Co., Inc., 108 Conn. 309, 312, 143 A. 155 (1928).

4 The discussion of similar issues in New England Yacht Sales v. Connecticut Commissioner of Revenue Services, No. 271600, 11 CLT No. 13 at 11, April 1, 1985 (Conn. Super. Ct. Oct. 4, 1984), appeal docketed, No. 12606, is distinguishable in that the boat sales involved in that case took place before the exemption at issue in this opinion was enacted. In our judgment, the issue of transfer of title, at the heart of the court's analysis in New England Yacht Sales, is simply not relevant to the question you have posed to us.

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