

This Week in State Tax (TWIST) – November 2, 2009

Massachusetts: Appellate Tax Board Upholds Use Tax Assessment on Vessel Moored In-State

The Massachusetts Appellate Tax Board was recently asked to determine whether a use tax assessment issued to a taxpayer who purchased a vessel free of sales tax in New Hampshire, but subsequently moored the boat in Massachusetts, was proper. The vessel, aptly christened the “Blaze of Glory,” was purchased in 2001, but destroyed by fire in 2006. Following an audit of the marina where the “Blaze of Glory” had been stored, the Department of Revenue issued a use tax assessment, which the taxpayer protested. Before the Board the taxpayer argued that the assessment should be abated because he intended to moor his vessel in New Hampshire, but was unable to find an available slip. As such, the taxpayer argued that the vessel was not purchased with intent to be used Massachusetts, and thus no use tax was due.

The sole issue before the Board was whether the “Blaze of Glory” was “purchased ... for storage, use or other consumption within the Commonwealth.” If so, use tax was owed. Furthermore, Massachusetts law contains a presumption that tangible personal property shipped or brought into the Commonwealth by a purchaser within six months following the purchase, was purchased for use in the Commonwealth. The Board rejected the taxpayer’s argument that the boat was not purchased “for use” in the Commonwealth, noting that at all times since its purchase the “Blaze of Glory” was kept in Massachusetts. In addition, although the taxpayer presented contradictory evidence, the Board discerned that he had lived and worked in Massachusetts during the period when the “Blaze of Glory” was still afloat. Accordingly, the use tax assessment was upheld.

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