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July 1, 2007

# Yacht and Jet Industry Legislative Update

## “Budget Gap” – Going Back To The Old 90 Day and 6 Month Tests?

Most people in the yacht and jet industry are aware that last year’s California Budget included a trailer bill that extended Section 6248 of the Revenue and Taxation Code, as amended. However, CA Rev & Tax Code § 6248 (h) provided:

**“This section shall remain in effect only until and including June 30, 2007, and as of July 1, 2007, is repealed.”**

Before you jump into a transaction as of July 1, 2007 thinking you are under either the old 90 Day Test or 6 Month Test because there is a gap in time between a statute repeal date and subsequent re-enactment of that statute at a later date (“GAP” ©-CJW) you need to consider how the California Budget works.

This is not the first time we have had GAP and it will not be the last. At the moment, there is neither a senate nor assembly bill that contains language continuing the CA Rev & Tax Code § 6248 1yr-Resident / 6 Mo Non-Resident tests. **That does not mean that a clean up Trailer Bill is not going to be adopted continuing CA Rev & Tax Code § 6248 1yr-Resident / 6 Mo Non-Resident tests which may be retroactive to July 1, 2007!** There is no question that modest retroactivity (e.g., <14 months) within legislation is legal. <sup>1</sup>

Therefore until the Budget is passed you need to plan accordingly. If you are going to gamble that a clean up Trailer Bill will not be introduced including continuation language for CA Rev & Tax Code § 6248 1yr-Resident / 6 Mo Non-Resident tests, it would be foolish for a California resident to rely on the old 6 Month Test unless the only reason the vessel or jet returned to California was for “RRM” ©-CJW For California residents, proceeding under the old 90 Day Test rules or under the 6 Month Test **with entry limited to RRM** is the best bet. Non-CA-Residents have a bit more flexibility since under the new rules they can be in CA for any reason provided the duration is not such that it creates “situs” for property tax purposes.

I do not have a crystal ball and I am not making any predictions, but based upon my conversations with legislators and the legislative analysts office it is my belief that the legislature is going to move to make the CA Rev & Tax Code § 6248 1yr-Resident / 6 Mo Non-Resident tests permanent as it currently exists. (LAO recommended removing the use tax tie-in to property tax for non-residents but that probably will not happen at this time.) I also believe as in the majority of past clean up Trailer Bills that the effective date would be retroactive to the Budget beginning date, i.e., July 1, 2007.

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<sup>1</sup> United States v. Carlton, 512 U.S. 26 (1994)