

M e m o r a n d u m

585.0090

To: Petitions Unit (RMF)

Date: August 31, 1978

From: W. E. Burkett

Subject: Application of Tax to Floating Homes

I have reviewed these files in light of J. E. Mahler's memo of December 15, 1977 and G. J. Jugum's summary dated February 7, 1978.

We agree with the conclusion that a houseboat or floating home is personal property unless it is affixed in such a manner that it becomes permanently annexed to the real property and that the property may be classified as a vessel even though acquired for use as a residence.

An item is permanently annexed if affixed in such a manner that the owner intended the property to remain there throughout its useful life. In this connection, it would be helpful in each case to inquire if the owner of the property also owns the real property or holds a lease for a term equal to the life of the houseboat or floating home. If he (or she) does not own the property or hold a long-term lease on the real property, then this is very strong evidence that a permanent attachment was not intended.

If the property was affixed with the intention of making a permanent addition to real property, then the title to such property would pass to the owner of the real property when affixed except in the limited situation in which the property was a trade fixture used in a business activity. Very few people would relinquish their ownership interest in a houseboat or floating home by this method.

Once it is determined that the property is personal property the sole remaining question is whether the property was designed for navigation in the waters within the meaning of Revenue and Taxation Code Section 6273. The cases set forth in Mr. Mahler's memo, tell us that a houseboat or floating home is navigable even though it may be outfitted primarily for use as a residence. As stated in the _____ case, quoted at page 4 of the memo:

A houseboat is nonetheless a boat because, as its name implies, it affords a water-borne place to live with the added advantage of at least some maritime mobility. That she has no motive power and must, as would the most lowly of dumb barges, be towed does not deprive her of the status of a vessel. (390 F.2d at 597.)

It follows that a houseboat or floating home must be regarded as designed for navigation and therefore a vessel within the meaning of Section 6273, if it is designed for movement over the waterways even though it must be towed or assisted by tugboats.

This interpretation is somewhat broader than published Annotations 150.0240 and 190.0440, since they purport to classify certain types of stationary attachments as representing a permanent addition to the property without further qualification. We are initiating the action necessary to remove these rulings from the tax service and to republish a ruling in accordance with the views expressed in these memos. However, since these rulings have been published, they should be applied to all pending cases prior to the date of the removal from the tax service, including the case currently under consideration.

We should not attempt to assert tax on a transfer that we have heretofore classified as exempt.

WEB:po

Attch: Files