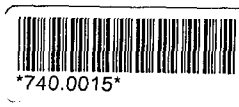
State of California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Board of Equalization

Memorandum

To :

Date : December 14, 1990

From : James M. Williams

Subject: Personal Property Tax on Boats

In your memo of December 3 you asked our opinion as to whether the subject racing boats would be liable for personal property tax if they are present in San Diego County on the March 1, 1991 lien date. As you are well aware this question is within the sole purview of the County Assessor as advised by his county counsel; however, in general under most circumstances it is our view that the boats would not be taxable by County. The ultimate determination of the taxability of any particular racing boat will, of course, depend upon the facts of each case.

At common law the taxation of vessels was controlled by the home port doctrine which was a variation of the rule of mobilia sequunter personam, subjecting tangible, movable personal property to taxation only by the jurisdiction of the owner's domicile. The modern California view, however, uses home port simply as a starting point but goes further to determine whether a vessel has acquired a taxable situs in another jurisdiction. Thus the assessor will also review the reasons for the vessels' presence along with the quantity and quality of contacts with the county in deciding if the nexus is sufficient to support taxation. If the boats are personally owned, present only, for the race and related requirements thereof, and only receive county services that are race-related, then the nexus will not support a situs subject to general property taxation.

More specifically the assessor will be bound by the precedent established by the two cases in the following discussion. In the earlier case, Martinac v. County of San Diego, 255 Cal. App.2d 175 (1967) the vessels were two tuna fishing boats with corporate owners domiciled in Tacoma, Washington which was the documented home port of the vessels. They were built in Tacoma but never returned there: 265 days a year were spent at sea, 66 days in San Diego for repairs and crew rest (most of whom lived there) and 34 days at the cannery in San Pedro. The owners paid personal property taxes to Pierce County, Washington (home port). In concluding that the boats could not be taxed by San Diego, the court stated:

> San Diego is neither the situs of federal registration, nor the jurisdiction encompassing majority ownership, management, decision making, or cargo unloading. In substance, plaintiffs' vessels are located primarily at sea, entering ports only to deliver their catch, obtain provisions and repairs, and return to the high seas. San Diego is their port of convenience but neither their permanent location nor home port (at 177-178).

Subsequent to this case the home port doctrine was downgraded in dicta provided by the United States Supreme Court. In a case arising from Los Angeles, Japan Line Ltd v. County of Los Angeles, 60 L. Ed. 2d 336 (1979) it reversed a decision of the California Supreme Court involving cargo containers that were Japanese owned and domiciled but maintained a continual presence at the port of Long Beach. The court stated that the rule has fallen into desuetude and in the analysis of the Commerce Clause of the U.S. Constitution it has yielded to a rule of fair apportionment. In this case the court went further to base its analysis on the foreign commerce clause and ruled that the containers were only taxable in Japan (the home port).

In the second precedential case, County of San Diego v. Lafayette Steel Co., 164 Cal. App.3d 690 (1985) the vessel was documented at Sitka, Alaska and owned by a Michigan corporation with offices in Sitka. It was designed for commercial fishing and during the period in question first arrived in San Diego in November 1977. Except for a voyage to Costa Rica from February 1 to March 5, 1978 it remained in the San Diego harbor undergoing repairs until sold in February 1979. The owner did not pay 1978 tax on the vessel in any jurisdiction. In holding that it was taxable by San Diego County the court noted that the determination depends upon sufficient contacts between the county and the vessel to satisfy due process, i.e., use and employment within the jurisdiction and the opportunities, benefits or protection afforded the vessel by the county. It is subject to tax because it was used and employed in the county in the 1978 tax year and was entitled to the benefits and protection afforded vessels moored in the harbor.

Significantly you will note that in Lafayette the ship was absent on lien date and in Martinac its whereabouts was not mentioned. We can reasonably conclude that lien date presence can be a factor but it will not control. Secondly, Lafayette made no mention of either Martinac or Japan Line in its analysis and conclusion.

If the boats are devoid of any commercial purpose; are present in the county for three months or less; are registered in a foreign home port and pay property taxes therein, then it is a reasonable certainty that they will receive the benefit of the homeport doctrine and not be taxed by San Diego County. In other words Martinac and its progenitor will control. On the other hand commercial advertising on the sail and hull along with corporate sponsorship or ownership (particular by non-California, United States corporations); stays in the county for over six months and non-payment of tax in any jurisdiction may tilt the balance in favor of Lafayette and provoke an assessment by the county. Based on our limited knowledge of the race very few if any of the boats (other than San Diego entries) would fall into this latter category and be subject to tax. We are unaware of any case that approximates all of the factual conditions of the various racing entries.

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cc: Mr. E. L. Sorensen, Jr.
Mr. John Hagerty
Mr. Verne Walton
(Attn: Mr. Mark Buckley - please note Lafayette. It is a better case in favor of taxation than Sayles.)