

August 27, 1979

The vessel must be exclusively used for the exempt purpose. There is no requirement that the vessel be owned by the taxpayer, but only exclusively used by him. The vessel need only be exclusively "engaged or employed" by the taxpayer.

The vessel must be used for taking and possessing a living resource of the sea. Vessels used for the taking of oysters would qualify. Oysters are living, they are taken from the sea, and they are a resource. It doesn't matter whether they are planted or natural because there is no provision in Section 227 to require the resource be a "natural" resource. And it doesn't matter that the oysters are cultured in cages hung from barges anchored at sea because liberally construed the oysters are "taken from the sea".

Vessels at sea used to facilitate pumping of sea water inland to supply sea water to inland oyster beds would also qualify so long as the purpose was to bring food to the oysters. The food thus brought inland is a living resource of the sea, and it is taken for a commercial purpose. Such use of the documented vessel is a qualifying use. However, all equipment not reasoned to be an appurtenant part of the vessel would not qualify for the preferential tax treatment.

Vessels anchored or used inland would not qualify unless it could be shown they were used for taking and possessing of a living resource of the sea. For example, vessels anchored inland to facilitate pumps which draw sea water could qualify if used to draw food from the sea. But inland vessels used to carry oyster cages would not qualify because the element of "taking from the sea" would be absent.

The statute does not require the vessel be highly mobile. The vessel need only be a water craft used or capable of being used as a means of transportation on water. (See Section 130, Rev. & Tax. Code.) If the vessel has such capacity, it appears irrelevant as to how long it is anchored in one spot.

Our interpretation of the intent of the statute is that the commercial exploitation of the sea is to be favored. We suggest Section 227 should be liberally interpreted toward this end.

Very truly yours,

Robert R. Keeling
Tax Counsel

RRK:fr

bc: Mr. Gordon Adelman
Mr. Robert H. Gustafson

Mr. Verne Walton
Legal Section