

Memorandum

To: Ms. Sherrie Kinkle (MIC:64)
Supervising Property Appraiser

Date: February 4, 2010

From: Denise Riley
Tax Counsel

Subject: **Floating Homes**
Assignment No. 09-240

This is in response to your request for a legal opinion regarding the proper interpretation of Revenue and Taxation Code section¹ 229 with respect to the qualification of a floating structure as a "floating home." As you know, a floating home is treated as real property under section 229 for property tax assessment purposes. At issue is whether a floating structure that uses a pump-out boat to remove waste from the floating home to the city sewer system instead of having a "permanent continuous hookup to a shoreside sewage system" qualifies as a floating home under section 229.

You forwarded a memorandum from Ms. _____ of the _____ County Counsel's Office in which she opined that the use of a pump-out boat to remove waste from a floating structure to the city sewer system does not disqualify the property from being treated as a floating home under section 229 since the requirement that a floating home must have a "permanent continuous hookup to a shoreside sewage system" is not specific as to the form of the hook-up. She also argues that the subject property does have a "continuous" hook-up to a shoreside sewage system in that a pump-out boat removes the waste from the floating structure and transports it to the shoreside sewage system. For the reasons explained below, we disagree.

Legal Analysis

Section 229, subdivision (a) provides that: "A floating home shall be assessed in the same manner as real property." In other words, floating homes enjoy the protections of Proposition 13 in that, rather than being reassessed to fair market value each year, they are reassessed only upon a change in ownership or upon new construction, and otherwise are subject to a maximum two percent annual inflation adjustment.

Subdivision (c) of section 229 (section 229(c)) defines a floating home to mean:

A floating structure which is *all* of the following:

- (1) It is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling.
- (2) It has no mode of power on its own.

¹ All section references are to the Revenue and Taxation Code unless otherwise stated.

(3) It is dependent for utilities upon a continuous utility linkage to a source originating on shore.

(4) *It has a permanent continuous hookup to a shoreside sewage system.*

'Floating home' does not include a vessel.... (Emphasis added.)

Floating structures that do not meet the definition of a "floating home" under section 229 is treated as personal property, and thus, does not enjoy the protections of Proposition 13, but is subject to annual assessment.

Floating Structures That Use a Pump-Out Boat to Eliminate Waste

The language of section 229(c) is unambiguous. It states that *all* four requirements must be met for a floating structure to be considered a floating home and to qualify as real property. Section 229(c)(4) requires that the floating structure must have "*a permanent continuous hookup to a shoreside sewage system*" to qualify as a floating home. The use of the word "permanent" preceding the word "continuous," means that the continuous hookup must be permanent to qualify. Qualifying words or phrases should be applied to those immediately preceding them unless separated by a comma. (See *Garcetti v. Superior Court* (2000) 85 Cal.App.4th 1113, 1120. (Last antecedent rule).) Likewise, the term "hookup" preceding the phrase "to a shoreside sewage system" must be read together to understand the meaning of the term "hookup." It is not just any hookup that is required, but a hookup "to a shoreside sewage system."

A pump-out boat is "a boat that pulls up to other boats to empty their waste into a holding tank on the pump-out boat, which takes the waste to a fixed unit on a dock, or shore area, and unloads the waste into the sewer lines."² The pump-out boats are not permanently connected to the boats (nor are they permanently connected to the shoreline sewage system), but are temporarily connected to the boats periodically in order to remove the waste from the boats and to transport the waste to the shoreside sewer system. Therefore, we do not believe that such use can be characterized as "permanent" or "continuous." Moreover, while section 229 does not define the form of the hook-up, it does specify that the hook-up must be *to* a shoreside sewer system. We believe that the phrase "hook-up to a shoreside sewage system," as used in section 229(c)(4), envisions a floating structure that is directly connected to the shoreside sewage system, as opposed to being "connected" to the shoreside sewage system by means of a temporarily "connected" pump-out boat. A pump-out boat that travels to and from the seashore and to and from the floating structure does not appear to be the type of connection anticipated by section 229(c)(4) since it is neither permanent nor continuous as specified and required by section 229(c)(4).

Therefore, we do not believe that floating structures that use pump-out boats to transport their waste to a shoreside sewage system meet the requirements set forth in section 229(c)(4). Neither do we believe it appropriate to ignore this requirement in the face of the plain language of the statute. The statute is to be interpreted by the language in which it is written, and its express provisions should not be disregarded. (See *Delaney v. Superior Court* (1990) 50 Cal. 3d 785, 799.)

² See attached Webpage: "What is a Pumpout Boat?" discussed at www.pumpoutboats.com.

The legislative history supports this conclusion. The Legislature clearly intended to allow only those floating structures that had *permanent and continuous* sewage hookups to a shoreside sewer system to qualify as floating homes for property tax purposes. In this regard, prior to the enactment of section 229, floating homes were treated by the Board of Equalization (Board) and most counties as:

...personal property unless [the owner proved that the floating homes were] permanently annexed to real property, the owner own[ed] the dock or lease[d] it for the life of the floating home, or the vessel [was] not navigable according to a broad definition of navigability.³

According to the Assembly Revenue & Taxation Committee's (Committee) Analysis of Assembly Bill (AB) 1506 (the bill that resulted in the enactment of section 229), the purpose of section 229 is to provide tax relief to floating home owners by placing them on a taxation system more on par with the taxation of mobilehomes and conventional homes. However, as noted by the Committee, the language of the bill defining what type of property qualifies as a floating home was:

...sufficiently stringent to prevent a variety of vessel types, such as luxury yachts or sailboats, from claiming they are floating homes in order to get the advantages of base year value assessment even though they have the mobility of personal property.⁴

In other words, the Legislative intent was to carve out a small exception to the general rule that floating structures, even those capable of being lived in, are to be treated as personal property, and to allow only a small, well-defined, group of floating structures to be treated as real property (i.e., those that meet *all* four requirements specified in section 229(c)).

Finally, the Board sent the Committee its own analysis of AB 1506⁵ prior to the enactment of section 229. In that analysis, the Board noted that "the legislation requires a permanent, continuous hook-up to a shore-side sewage system [but that] [m]any of these units have storage tanks which are periodically pumped," pointing out that the legislation, as written, would not cover those types of floating structures. Notwithstanding, the Legislature adopted the more stringent definition of floating homes, which does not cover the type of floating structures at issue here.

Ms. [redacted]'s opinion appears to be based on the fact that a floating structure that meets all of the other section 229 requirements (other than section 229(c)(4)), more closely fits the definition of a "floating home" than it does the definition of a "vessel" under section 6273, and, therefore, should be treated as a floating home for property tax purposes. Without opining on whether section 6273 includes or does not include floating structures that meet all of the other section 229 requirements, but do not meet the section 229(c)(4) requirement, we simply note that section 6273 defines "vessels" for sales and use tax purposes, not for property tax purposes, and that if a

³ See attached May 6, 1981, Assembly Revenue & Taxation Committee Analysis of AB 1506 (Ch. 44; Stats. 1982) at p. 4.

⁴ *Ibid.*

⁵ See attached May 20, 1981, State Board of Equalization, Legislative Bill Analysis of AB 1506.

floating structure is not a "floating home" as defined by section 229, it does not necessarily follow that it must then be characterized as a vessel as defined in section 6273. In other words, the classification of floating structures for property tax purposes is either as a floating home as defined in section 229, or as personal property, not as a "vessel" under section 6273.

DR/yg

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Attachments

cc: Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70