(916) 445-6900

April 18, 1977

Mr. Dick Frank
San Luis Obispo County Assessor
Palm & Osos
San Luis Obispo, CA 93401

Attention: Mr. Norman D. Rich
Assistant Assessor

Dear Mr. Rich:

Re: Simultaneous Use of a Vessel for Commercial Fishing and as a Residence

Your letter of April 7, 1977, to Mr. James J. Delaney, Chief Counsel, requests an opinion as to whether a vessel, qualified under Revenue and Taxation Code, section 227, for commercial fishing, may also be eligible for the homeowners' exemption provided that it also meets the criteria of the owner's principal place of residence. Our research has not uncovered any direct legal, authority on point, but for the reasons discussed below, we think that the assessment reduction and the exemption are mutually exclusive.

In general the taxpayer is subject to full ad valorem taxation, but for specific acts of the legislature which provide relief in very well defined circumstances. The California courts have consistently held that property tax relief shall be subject to a strict but reasonable interpretation and that the burden of demonstrating that the property comes clearly within the terms of the relief is upon the taxpayer.

Bearing this view in mind, we now turn to the applicable statutes. Revenue and Taxation Code, section 227, provides:

> ...only if the vessel is engaged or <u>employed exclusively;</u> (a) In the taking and possession of fish or other living resource of the sea for commercial purposes;

and Revenue and Taxation Code, section 218 (d) provides:

> "Dwelling" means a building, structure or other shelter <u>constituting a place of abode,</u> whether real property or personal property, and any land on which it may be situated. (Emphasis added.)

The question turns on whether or not there is a legal conflict between the exclusive use of the vessel for commercial fishing and its constitution as an abode notwithstanding the fact that the vessel can be concurrently subject to both uses. Resolution of the issue must be resolved as a matter of legislative intent.

The language of section 218 (d) was selected for its exceptional breadth to insure that no homeowner would be precluded from that exemption because of his architectural taste or because of his financial status. There is no indication in the legislative history that the selected language would permit this exemption to be joined with another tax reduction provision. There is an indication in the prior version of this statute that the exemption would not apply if the property received any other allowance

for taxes. That requirement was deleted by AB 2972, chaper 1060, stats. 1976, for reasons unrelated to the present question. Furthermore, the introductory paragraph of section 218 specifically precludes application to property that is receiving the veteran's exemption. Moreover, there is no other instance in which dual exemption or ad valorem tax reduction is permitted on a single parcel of property.

In summary: (1) exemptions are to be strictly construed; (2) the legislative intent indicates a dual prohibition, and (3) positive authority is completely lacking. For these reasons, it is our opinion that the provisions are mutually exclusive and the taxpayer must elect and properly claim in the alternative.

Very truly yours,

James M. Williams
Tax Counsel

JMW:fp

Bc: Mr. Abram F. Goldman
Mr. Walter R. Cenini
Mr. jack F. Eisenlauer
Mr. L. Gene Mayer
Legal Section