



Mr. Ray Mrotek

November 21, 1980

Mr. James M. Williams

Classification of Houseboats

Your memo of November 10, 1980, requested our opinion on the proper classification of houseboats, including those designated as floating homes, within the meaning of the laws applicable to the taxation of California property for ad valorem purposes. More specifically, the question deals with the treatment of houseboats, which are located in Sausalito, by the Marin County Assessor. Based on prior research of the Board's legal staff and a subsequent case that deals with property tax applications, it is our conclusion that the Marin houseboats should be classified as personal property as a mixed matter of law and fact.

In an opinion dated December 15, 1977, Mr. James E. Mahler of our staff dealt with this classification problem for purposes of Revenue and Taxation Code, section 6273, as applied to three floating homes that were located at Sausalito. His conclusion that these homes were personal property has been approved and promulgated as policy by the Board's Business Tax Department effective January 1, 1979. We agree with Mr. Mahler's analysis and our subsequent review of the most recent property case does not alter our opinion.

Specialty Restaurant Corp. v. County of Los Angeles, 67 Cal. App. 3d 924 (1977), considered the question of the classification of the Queen Mary, as located at its special wharf in the Long Beach Harbor, for ad valorem property tax purposes. Although this case represents the most recent holding on the subject, it is subject to two significant limitations. First, it should be borne in mind that the Queen Mary enterprise is a most unusual and strictly one of a kind situation. Secondly, if the court held that it was personalty, then all of the private businesses that were operated thereupon would enjoy a complete exemption from real property taxation. The patent unfairness of this result is clearly demonstrated by contrast to the many possessory interests in a land-based, government facilities. One

final introductory comment should be made on the arbitrariness of the classification of the Queen Mary. Starting in 1972 the Assessor of Los Angeles County classified the vessel as an improvement to real property. Upon assessment appeal the appeals board reclassified the vessel as personalty and this conclusion was independently upheld by the trial court. However, on appeal this decision was also independently reversed and thus the final classification of the unanimous three judge court was as an improvement. It would not be without merit to say that the proper classification of the Queen Mary was what the last reviewing court said it should be.

Turning specifically to the language of the case, it should be noted that the decision enumerates and re-enumerates the physical facts regarding the vessel's manner of annexation. However, in my view it cannot be said that any one fact was decisive in that it would be dispositive of the question. The court does spend considerable space analyzing the three tests to be applied to determine whether an article is an object affixed to the realty:

First is the manner of its annexation. The court recites the various connections from the ship to the pier, none of which are in general different from the way any ship ties into a pier, but then singles out - "The rock dike enclosing the ship clearly blocks its ready removal from the site". Concentrating on why the fact that the vessel floats is not determinative, the court found that it was to protect against earthquake damage. In contrast, a houseboat does not require a dike, nor is it permanently attached for earthquake protection.

Second is the adaptability of the article for the use and purpose of the realty. This test is resolved by answering the question, whether or not the real property is peculiarly valuable in use because of the continued presence of the article. Moreover, the court found that all the improvements made to the land were designed to accommodate the Queen Mary as a tourist attraction. It is manifest that the area of real property permanently occupied by the Queen Mary is peculiarly valuable in use because of the Queen Mary's presence. Again in contrast, I doubt if the same could be said for the houseboat area. The site selection and preparation certainly is not comparable. Further, it would seem that substitution of another use could be easily accomplished and equally as valuable. For example, the area could be rapidly converted to a pleasure boat marina.

The third test is the intention of the party making the annexation. For taxation purposes it is not the subjective intention of the party but the intention apparent from the physical facts. On this test the court again enumerates all of

the connections between the vessel and the shore, rementioned the large rock dike but goes on to list the construction of a separate power plant to exclusively service the vessel and finally concentrates on the total site development as a permanent tourist attraction. The court quoted the rule that great expense involved in removal and the difficulty attending removal are indicative of intended permanence. In this regard there is absolutely no comparison between the Queen Mary and the household in question. For the latter all that is necessary is the disconnection of flexible lines and the mooring rings. The use of tugboats to move a houseboat in terms of stability and distance would certainly not be trifling but obversely it is not comparable to the removal of an enclosing rock dike and the movement of a 50,000 ton former ocean liner.

Based on the foregoing I have no doubt that the facts and the law of Specialty Restaurants is solidly in favor of a personal property conclusion for the houseboats in question. Although not specifically cited in the tests, two other facts were relied on in the appellate court's opinion. The unitary concept of the total development of some 60 acres of the site as a tourist attraction in which the vessel is the primary physical property dominates the opinion and of course, demonstrates the uniqueness of the case. Coupled with the concept is the extensively cited testimony that looks to the 50 year life of the project, as originally planned and then executed in the form of construction accomplished and leases to private enterprises, for the primary indication of the test of permanence.

As a final note, I have checked AH 578, Vessel Assessment Procedure, and find nothing therein that would suggest that houseboats should be treated as real property. With the exception of 3 on page 31, finding of an amphibious motor vehicle, the handbook mandates treatment completely as a vessel and hence as personal property.

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