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February 22, 2012

Mr.
 Deputy Assessor
 Orange County Assessor's Office
 625 N. Ross Street, Room 135
 P.O. Box 149
 Santa Ana, CA 92702-0149

**Re: *Net Tonnage for the Application of Vessel Exemption
 Assignment No.: 11-258***

Dear Mr. :

This is in response to your October 5, 2011, facsimile concerning "vessels of more than 50 tons burden" as that term is used in Section 3, subdivision (l) of Article XIII of the California Constitution, which provides a property tax exemption for vessels over 50 tons burden used to transport freight and passengers. As hereinafter discussed, as determined by the California Court of Appeal in *Kiessig v. San Diego County* (1942) 51 Cal.App.2d 47, "tons burden" means the net register tonnage, and not either the gross tonnage or the tonnage as measured under the International Convention on Tonnage Measurement of Ships of 1969 (Convention).

Facts

The vessel in question is a steel hull charter vessel, approximately 110 feet in length, 24 feet in breadth, and 6 feet in depth, owned by an LLC and operated by a vessel charter company. It was exempted from assessment in 2008, 2009, and 2010 as a vessel of more than 50 tons burden in California and engaged in the transportation of freight and passengers.

A June 2010 United States Coast Guard Certificate of Documentation (hereinafter, USCG Certificate of Documentation) issued for the vessel, lists the vessel's gross and net tonnages as follows:

<u>Gross Tonnage</u>	<u>Net Tonnage</u>
307 GT ITC	95 NT ITC
72 GRT	49 NRT

As indicated, the USCG Certificate of Documentation for the vessel includes two net tonnages, 95 NT ITC and 49 NRT. The designation "NT ITC" is the net tonnage as measured by the Convention. However, in light of the vessel's net tonnage, 49 NRT, the owner's application

for exemption from assessment of the vessel for 2011 was denied, and the exemptions for 2008, 2009, and 2010 were cancelled.

Law & Analysis

Former Article XIII, section 4 of the California Constitution, Article XIII, section 3, subdivision (l)'s predecessor, provided:

All vessels of more than fifty (50) *tons burden* registered at any port in this State and engaged in the transportation of freight or passengers, shall be exempt from taxation. . . . (Emphasis added.)

In 1942, the California Court of Appeal was called upon to determine the meaning of "tons burden" as used therein in *Kiessing v. San Diego County, supra*, after the trial court adopted as the measure of the "burden" of two vessels for which exemption was sought the respective "net tonnages" thereof as registered in the United States Customs Office. Upon analysis and consideration, the court concluded at page 54:

. . . the words "tons burden" when used together have a technical meaning, and connote a measurement peculiar to ships and shipping. We have seen from the statutes and from the cases cited that this meaning is net register tonnage, as the trial court held.¹

A copy of *Kiessing v. San Diego County, supra*, is enclosed for your review.

Thereafter, in June of 1969, the United States became one of the contracting governments to the Convention, designed to establish uniform principles and rules with respect to the determination of tonnage of ships engaged on international voyages. Article 2, Definitions, defined "gross tonnage" as the measure of the overall size of a ship determined in accordance with the provisions of the Convention and "net tonnage" as the measure of the useful capacity of a ship determined in accordance with the provisions of the Convention. Article 7, Issue of certificate, provided, in part, that an International Tonnage Certificate (1969) shall be issued to every ship, the gross and net tonnages of which are determined in accordance with the Convention;² and Article 11, Acceptance of certificate, provided that the certificate issued under the authority of a Contracting Government in accordance with the Convention shall be accepted by the other Contracting Governments and regarded for all purposes covered by the Convention as having the same validity as certificates issued by them. A copy of the Convention is also enclosed for your review.

Accordingly, GT ITC and NT ITC tonnages are tonnages established pursuant to the Convention, typically for international purposes, whereas GRT and NRT are tonnages established pursuant to Title 46 of the Code of Federal Regulations (CFR), the Federal statutory provisions pertaining to measurement of vessels. As the Convention does not purport to bind or

¹ In *Alalunga Sport Fishers, Inc. v. San Diego County* (1967) 247 Cal.App.2d 663, the California Court of Appeal stated at page 668:

. . . A trial court in *Kiessing v. County of San Diego* (1942) 51 Cal.App.2d 47 [124 P.2d 163], had found sportfishing vessels to be engaged in the transportation of passengers for hire but had denied the claim of exemption because the vessels were of less than 50 tons burden, contrary to the owner's contention. It was on that point that the trial court was upheld. The case is valuable as defining the meaning of "50 tons burden."

² Recorded/reported as __ GT ITC and __ NT ITC.

impact state or local governments of a Contracting Government with respect to use of the ITC measurement for purposes of local property taxation, *Kiessig v. San Diego County, supra*, continues as the seminal case in construing the Constitutional provision. Therefore, in our opinion, "tons burden" continues to mean the net tons burden or the "net register tonnage" as established under the CFR when such measurement has been made. As stated on page 41 of the Board's Assessors' Handbook AH 576, Assessment of Vessels (February 2002):³

Exemption for Vessels of More than 50 Tons Burden

Article XIII, section 3, subdivision (l) of the California Constitution provides. . . . With respect to this provision, "50 tons burden" shall mean "50 tons net burden" as registered in the United States Customs Office.⁴ In *Kiessing v. County of San Diego*⁵, the court determined that it would rely on case law and upon the provision of the federal shipping act which defines "tonnage", being that "tons burden" meant "net tons", or "net register tonnage". In allowing the exemption, an appraiser should verify the net tonnage on a specific vessel. Certificates of Documentation⁶ state the gross and net tonnage of a vessel. . . .

As to what tonnage measurement on a USCG Certificate of Documentation the Assessor uses as the tonnage of a vessel for purposes of the exemption then, it is Net Tonnage, NRT. As stated in AH 576 at page 41, "tons burden" means "net tons", or "net register tonnage". In this instance, the "net register tonnage" on the USCG Certificate of Documentation for the vessel was 49, which tonnage the Assessor's Marine and Air Division correctly used.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein. Therefore, they are not binding on any office, or any person or public entity.

Sincerely,

/s/ J. K. McManigal, Jr.

J.K. McManigal, Jr.
Senior Tax Counsel

JKM:yg

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Enclosures

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

³ Subsequent to 1942 case of *Kiessig v. County of San Diego, supra*, and to the 1969 Convention.

⁴ Registration now at the National Vessel Documentation Center in Falling Waters, West Virginia.

⁵ Citation omitted.

⁶ USCG Certificates of Documentation, which, as indicated, have both GT ITC and NT ITC as well as GRT and NRT.