

OPN 98-0009

Apr 22, 1998

Re: Houseboat, Floating Structure

Sections 192.001(17), 195.073(2)(a), 212.02(2),
212.03, and 212.05, Florida Statutes
46 Code of Federal Regulations, Part 67

Dear :

Your letter of March 14, 1998, to Governor Chiles has been forwarded to this office for a response regarding taxes applicable to a "houseboat" that you purchased for your retirement home in Key West. You question why you were double or triple taxed for your "houseboat".

Your inquiry deals with a variety of transactions. These transactions are governed by many taxing, registration, licensing and documentation requirements which are administered by several different local officials and state and federal agencies.

You state that you inquired as to the tax applicable to your "houseboat" and were told you have to pay sales tax on its purchase price. Your "houseboat" was not documented or licensed, and there was a purchase money mortgage deed from you to the seller, recorded with the clerk. You paid sales tax on the payments for the rental of the slip for your "houseboat." You then received assessments for ad valorem property tax.

While it may appear to amount to double or triple taxation, since separate transactions occurred, the law places a tax on each one. For example, the sales tax is a transaction tax and is based on the amount paid at the time of each sale or rental transaction. The property tax is a locally administered county tax and is based on the fair market value of an item of tangible personal property or of real property as of January 1 of each year. With the assistance of the Monroe County Tax Collector's

office, the Monroe County Property Appraiser's office, the vessel registration section of the Department of Highway Safety, the Marine Patrol, and the United States Coast Guard, I have compiled and reviewed the state statutes and Federal Codes applicable to the various transactions described in your letter to Governor Chiles.

Several years ago, the Florida legislature enacted a separate classification of barge-like items and named them "floating structures". "Floating structures" are not vessels or boats, but instead are a type of tangible personal property. These items are not titled or registered, and are taxed under separate provisions from vessels and boats. For tax purposes, your "houseboat" is considered a "floating structure".

A non-self propelled recreational or residential barge type "floating structure" such as yours is not required to be licensed, titled, registered or documented. Since "floating structures" are specifically excluded from state title and registration requirements as "vessels" they are not taxed like vessels and boats under the sales tax. They are taxed as tangible personal property. There is no sales tax on an occasional or isolated sale of tangible personal property by a private individual. A refund appears due of the sales tax on the purchase of the "floating structure."

However, "floating structures" are defined and taxed under property tax laws which expressly include "floating structures" as tangible personal property. "Floating structures" are required to be included on the tangible personal property assessment roll for county ad valorem property tax purposes. Thus, it was appropriate to assess property tax on the value of your "floating structure."

The tax you paid for the rental of the slip for your "floating structure" was not a tax upon the "floating structure" itself, but upon the separate transaction of the rental of the slip or right to occupy it.

Based on my discussions with respective administering officials and agencies and assuming all facts are accurately described, my

opinion is:

1. No sales tax should have been paid on the purchase price of your "floating structure" since it was an occasional or isolated sale of property that was not required to be registered, licensed, titled, or documented in this state or by the United States.

2. The Monroe County ad valorem property tax on the assessed value of the "floating structure" is the appropriate tax applicable to the value of the "floating structure."

3. The Florida sales tax charged to you on the payments for the rental of or right to use the boat slip was appropriately applied.

It appears sales tax was incorrectly applied to the purchase price of the "floating structure" due to the fact that everyone has unfortunately used the term "houseboat" which, if required to be either licensed, registered, titled, or documented would have been subject to state sales tax as an exception to the occasional or isolated sale provision in section 212.02, Florida Statutes.

Enclosed is a refund application (Form DR-26) for your convenience in applying for a refund of the sales tax paid on the purchase of the floating structure. Please note that this letter reflects my opinion and should not be considered as approval for a refund. It will be necessary for all documentation to be reviewed by the appropriate staff of the refund section of the Department. However, I have taken the liberty of obtaining all documentation necessary for the refund section's review. If you will sign the enclosed application and return it to me, I will deliver the completed form and required accompanying documentation for their review.

Please accept our apology for the expense and inconvenience caused due to this apparent miscommunication. I do want you to know that both the Monroe County Tax Collector's and the Monroe County Property Appraiser's offices have been instrumental in helping me research these matters and providing me with much of the necessary documentation and directing me to other sources for information.

Should you have any additional questions concerning any of the above or if we can help with any future concerns, please do not hesitate to contact me at (850) 414-6104.

Sincerely,

Jane Nobles
Tax Law Specialist
Technical Assistance and Dispute Resolution

JN /33560 /13741

Enclosure

cc: Mr. L.H. Fuchs, Executive Director
Department of Revenue
Mr. Frank Medehue, Senior Administrator
Refunds Process