

Taxability of Vessels Sold By Boat Dealers

This memorandum supplements TSB-M-82(3)S by illustrating the varied transactions which may be encountered by Boat Dealers and the taxable status of these transactions.

SALE BY A VENDOR WITH:

1. Delivery in the Same New York State Jurisdiction Where the Sale is Made

A customer goes into a boat yard in Suffolk County (7¼%) and purchases a boat for \$9,000. Upon completing the necessary paperwork (signing of sales agreement, transfer of title, boat registration, obtaining insurances, etc.) the customer takes possession of the boat and hauls the boat away on a trailer or sails it away from the boat dealer's dock. The boat dealer is required to collect the New York State and local tax imposed in the jurisdiction where his boat yard is located (7¼%), even if the customer is a resident of another taxing jurisdiction in New York State or is a non-resident of New York State. (Sales and Use Tax Regulation 525.2(a)(3) and section 1213 of the Tax Law.)

2. Delivery Occurring in a Different New York State Jurisdiction From Where the Sale is Made

A customer goes into a boat yard in Suffolk County (7¼%) and purchases a boat for \$9,000. The customer completes all the necessary paperwork (signs sales agreement, transfer of title, boat registration, obtains insurance, etc.) and instructs the boat dealer to deliver the boat to Schenectady County (4%). The boat dealer hires a common carrier, unregistered carrier or uses his own truck to make the delivery. Since the transfer of possession of the boat occurred in Schenectady County (4%), the boat dealer is required to collect only the 4% tax pursuant to Sales and Use Tax Regulation 525.2(a)(3), 526.7(e)(1), and section 1213 of the Tax Law. Note - documentation as stated in Technical Services Bureau Memorandum 82(3)S is required.

3. Delivery by the Vendor Outside New York State

Same facts as in Number 2, except the boat dealer delivers the boat to the State of New Jersey. The boat dealer is not required to collect any New York State and local tax pursuant to Sales and Use Tax Regulation 525.2(a)(3) and 526.7(e)(2). Note - documentation as stated in Technical Services Bureau Memorandum 82(3)S is required.

4. the Customer Arranging Pickup With a Vehicle Under his Control

Same facts as in Number 1 and Number 3 except that the customer hires an unregulated carrier or sends in his own truck to make the pickup and delivery. Pursuant to Sales and Use Tax Regulation 525.2(a)(3), the boat dealer would be required to collect the New York State and local tax imposed in the jurisdiction where his boat yard is located (7¼%) since the customer or his designee took possession of the boat in Suffolk County.

5. the Customer Arranging Delivery by a Common Carrier

Same facts as in Number 2 and 3 except that the customer hires a common carrier to make the pickup and delivery. The policy set forth in Numbers 2 and 3 would still be applicable.

6. the Vendor Hiring a Captain to Deliver the Boat

A customer goes into a boat yard in Suffolk County (7¼%) and purchases a boat for \$9,000. The customer completes all the necessary paperwork (signs sales agreement, transfer of title, boat registration, obtains insurance, etc.) and instructs the boat dealer to deliver the boat to him in New Jersey waters. The boat yard hires a captain to sail the boat, with the customer on board, from his boat yard to New Jersey waters and the boat yard instructs the captain to turn over possession of the boat to the customer when he reaches New Jersey waters. The boat dealer is not required to collect any New York State and local tax pursuant to Sales and Use Tax Regulation 525.2(a)(3) and 526.7(e)(2), provided proper documentation is maintained to substantiate the delivery.

7. the Customer Hiring a Captain to Deliver the Boat

Same facts as in Number 6 except the customer hires the captain to make the delivery. Pursuant to Sales and Use Tax Regulation 525.2(a)(3) the boat dealer would be required to collect the New York State and local tax imposed in the jurisdiction where his boat yard is located (7¼%) since the customer's designee took possession of the boat in Suffolk County.

8. the Boat Delivered as a Gift to Another Jurisdiction

A customer goes into a boat yard in Suffolk County (7¼%) and purchases a boat for \$9,000. The customer completes all the necessary paperwork (signs sales agreement, transfer of title, boat registration, obtains insurance, etc.) and instructs the boat dealer to deliver the boat as a gift to his son in Schenectady County (4%). The boat dealer hires a common carrier, unregistered carrier, or uses his own truck to make the delivery. Since the transfer of possession to the boat occurred at the location of the customer's designee (son) in Schenectady County (4%), the boat dealer is required to collect only the 4% tax rate pursuant to Sales and Use Tax Regulation 525.2(a)(3), 526.7(e)(1), and section 1213 of the Tax Law. Note - documentation as stated in Technical Services Bureau Memorandum 82(3)S is required.

TAX IS DUE TO BE REPORTED:

1. Based on Date of Delivery if Full Payment Has Not Been Made

A customer goes into a boat yard in Suffolk County (7¼%) on November 1, 1981 and purchases a boat for \$9,000. Upon completing all the necessary paper work (signing of sales agreement, transfer of title, boat registration, obtaining insurance, etc.), the customer makes a deposit of \$3,000 and instructs the boat dealer that he will take delivery of the boat in May, 1982 at the boat yard. The boat yard would report this sale on the appropriate sales and use tax return due for the month of May, 1982.

2. When Full Payment is Received Even When Delivery Occurs at a Later Date

Same facts as in Number 1, except that the customer pays for the boat in full on November 1, 1981. Since the customer paid the full price of the boat on November 1, 1981, the boat yard is required to report this sale on the appropriate sales and use tax return due for the month of November, 1981 pursuant to the provisions of Section 1132(a) of the Tax Law.

A VENDOR'S RESPONSIBILITY FOR TAX WHEN HE ACTS AS A BROKER UNDER THE CIRCUMSTANCES BELOW IS AS FOLLOWS:

1. When He Receives a Commission for Bringing Two Parties Together

A boat yard is contacted by an owner of a used boat who wishes to sell the same. The boat yard appraises the value of the boat and lists it available for sale and shows it to prospective buyers. If a prospective customer decides to purchase the boat, payment is made directly to the seller. The boat yard does not handle the payment at any time, except with respect to the down payment which is placed in an escrow account pending completion of the financing. The boat yard receives a commission, pursuant to the terms of the listing agreement entered into by the boat yard and the seller. The boat yard never takes title to the boat, nor does the boat yard ever receive possession of the boat. The boat yard transfers neither title to nor possession of the boat to the purchasers. The seller with whom the boat yard has dealt has never sold more than one boat since the inception of the boat yard's business. Since the boat yard does not transfer title to, or possession of the boat to the purchaser, and in light of the fact that the sale is consummated directly between the seller and purchaser, the boat yard cannot be said to be itself making a retail sale of the boat. Accordingly, the boat yard has no obligation to collect New York State and local tax on the above transaction.

2. When He Collects the Purchase Price

Same fact as in Number 1 except the boat yard bills for and collects the sales price of the boat and after deducting its commission, the boat yard remits the proceeds to the seller. In this case the boat yard is responsible for collecting appropriate New York State and local tax on the sale of the boat. (Alan Drey Co., Inc. v. STC; Names in the News, Inc. v. STC)

3. When He Performs any Activities a Seller Would Normally Perform

If the boat yard performs any of the activities a seller would normally perform (receives payment, takes title, receives possession, etc.), the boat yard is deemed to be responsible for collecting appropriate New York State and local tax on the sale of the boat. Possession by the vendor shall not occur merely because a boat is in storage, at a slip or docked on the premises of the boat yard, where the owner of the boat is paying for such storage, slip or dockage.

The following are the applicable sections of the Sales and Use Tax Law and Regulations:

Sales and Use Tax Regulation 525.2(a)(3) states. "The sales tax is a 'destination tax', that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate . . . . "

Sales and Use Tax Regulation 526.7(e) states:"(1) A sale is taxable at the place where the tangible personal property or service is delivered or the point at which possession is transferred by the vendor to the purchaser or his designee . . . (2) A sale of tangible personal property, in which the title to the property passes in New York, but in which delivery occurs outside of New York, is not subject to tax . . . ."

Section 1213 of, the Tax Law states: "Where a sale of tangible personal property or services, other than those described in subdivision (b) of section eleven hundred five, including an agreement therefor, is made in any city, county or school district, but the property sold or the property upon which the services were performed is or will be delivered to the purchaser elsewhere, such sale shall not be subject to tax by such city, county or school district. However, if delivery occurs or will occur in a city, county or school district imposing a tax on the sale or use of such property, the vendor shall be required to collect from the purchaser, as provided in section twelve hundred fifty-four, the aggregate sales or compensating use taxes imposed by the city, if any, county and school district in which delivery occurs or will occur, for distribution by the state tax commission to such taxing jurisdiction or jurisdictions. For the purposes of this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property by the purchaser."

Section 1132(a) of the Tax Law states: "Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies . . . ."