

The Florida Yacht Tax Cap: Northern Exposure

As most of you are well aware, effective July 1, 2010 the Florida legislature enacted an \$18,000. tax cap on each sale or use of a boat in the state. Taxpayers using boats or vessels in Florida on or after this date are subject to Florida use tax pursuant to Section 212.06, Florida Statutes (F.S.). The implementation of the cap was potentially highly beneficial to both (1) current foreign flagged yacht owners and (2) future yacht owners who intended to use their yachts exclusively in Florida waters. For the foreign flagged yacht owner operating pursuant to a claim of exemption from Florida use tax pursuant to a validly issued US Customs cruising license and the guidance of the Florida Department of Revenue (TAA 89(A)-015, the cap signaled the potential to transfer the yacht to a US based entity, remit the \$18,000 in tax, and ultimately eliminate potential logistical concerns in securing the annual cruising license as well as any port entry reporting requirements. For the future yacht owner, the cap, of course, represented a significant tax savings on their yacht purchase. As we all know, however, many yacht owners enjoy sailing their yachts back and forth from Florida to the Northeast in conjunction with the changing of the seasons. As a result, yacht owners are bringing their yachts to popular cruising destinations in New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Maine. After remitting the \$18,000 in tax to Florida, these yacht owners may be entering popular Northeast destinations with the misplaced confidence that their Florida tax-paid yachts are not subject to potential use tax liability in the taxing jurisdictions of the Northeast.

It is clear that the revenue-starved taxing jurisdictions in the Northeast have become increasingly aggressive in pursuing use tax liabilities from vessel owners with foreign flagged yachts and yachts registered in other states only briefly visiting these states. Last summer for example, marked an increase of State Revenue, Local Maine Patrols and US Customs inspections acting in concert detaining foreign registered pleasure yachts in high profile New York and Long Island ports. Reports of the inspections revealed they were thorough bringing to light any number of issues in addition use tax and state registration matters such as immigration matters for foreign crew, handgun permits and vessel safety concerns.

Currently, Northeast states' legislatures continue to enact revisions to their respective sales and use tax statutes concerning yachts, many of which from a tax perspective could be very expensive to yacht owners who unknowingly establish taxable nexus by their presence in these states. In general, a yacht owner that has remitted the \$18,000 tax in Florida is entitled to a credit of that amount in another jurisdiction. The payment of the tax in Florida, as we have discussed, is not a guarantee that a taxing jurisdiction in the Northeast will not seek to assess potential use tax liability on the yacht owner. As such, the following considerations must be made prior to cruising into Northeast waters:

1. Differences in the tax rate between Florida (6%) and Northeast states (i.e. New York – as high as 8.875%; Connecticut – as high as 7%);
2. The amount of time the vessel owner wishes to spend in any of the Northeast states;
3. Whether the owner of the vessel, either individually or as a beneficial owner/officer of the vessel owning entity, has any connections with any of the Northeast states, such as a home, business, or summer slip/mooring agreement;

4. The amount of time that has passed from date of the yacht purchase to the yacht's first entry into one of the Northeast states;
5. For yacht owners that own their yachts in entities (corporations, limited liability companies), whether proper corporate formalities have been instituted and legitimate business practices have been followed.

Provided a thorough review has been completed, guidance and recommendations can generally be provided to a yacht owner to help minimize potential use tax liability and possible audit inquiry concerning the ownership and operation of their yachts in the Northeast states. As seasoned mariners are aware, the Northeast states contain many beautiful summer cruising destinations, and it is our hope that with informed tax planning and guidance, these ports will be remembered for their beauty and not tax or regulatory nightmares.

Please contact any of our lawyers by phone or email with any questions or comments.

Careful Cruising!

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