

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-85 (1)S
Sales Tax
April 5, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840702A

On July 2, 1984 a Petition for Advisory Opinion was received from Deep Water Fleet, Inc., 45 Fairview Road West, Massapequa, New York 11758.

The issue raised is whether the purchase of charter and head boats, fuel and related maintenance and supplies are exempt from the New York State sales tax.

Petitioner operates a charter fishing boat which, for a fee, provides transportation to groups of individuals for the purpose of deep sea fishing. Petitioner also fishes during these charters and sells its catch at the dock. The income from the sale of petitioner's catch is minor compared to the income from charter fishing. It is the petitioner's contention that its activities constitute commercial fishing and, therefore, qualify for exemption. Petitioner points to various federal rulings, programs and procedures which tend to classify charter boats as part of the overall fishing industry as a basis for exemption.

Section 1105(a) of the Tax Law imposes a sales tax on the receipts from every retail sale of tangible personal property unless otherwise excluded or exempt.

Section 1105(c)(3) of the Tax Law imposes a sales tax on maintaining, servicing, installing, or repairing tangible personal property not held for sale in the regular course of business.

Petitioner is subject to the sales tax imposed under section 1105(a) and 1105(c)(3) unless it qualifies for one of the exemptions to such tax as discussed below.

Point I

Section 1115(a)(6) of the Tax Law provides an exemption from the sales tax for "tangible personal property for use or consumption directly and predominantly in the production for sale of tangible personal property by farming . . ."

Regulation section 528.7 defines farming as "raising stock, dairy, poultry, or fur bearing animals, fruit and truck farming, operating ranches, nurseries, greenhouses, or other similar structures used primarily for raising of agricultural, horticultural or floriculture commodities and operating orchards."

Since petitioner does not raise fish or other marine life for sale in a manner which might be considered farming, petitioner does not qualify for the exemption under section 1115(a)(6) of the Tax Law.

Point II

Section 1115(a)(8) of the Tax Law provides an exemption from the sales tax for "commercial vessels engaged in interstate or foreign commerce and property used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs (other than articles purchased for the original equipping of a new ship.)"

Regulation section 528.9 states, in part that: "engaged in interstate or foreign commerce means the transportation of persons or property for compensation between states or countries."

Since petitioner does not transport persons or property for compensation between states or countries, it is not primarily engaged in interstate or foreign commerce and accordingly does not qualify for the exemption under section 1115(a)(8) of the Tax Law.

Point III

Section 1115(a)(12) of the tax law provides an exemption from the sales tax for "machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale by . . . extracting . . ." Section 1105(B) of the Tax Law provided for a gradual withdrawal of the state sales tax on machinery parts, tools and supplies used in the manner as provided in section 1115(a)(12).

Regulation section 528.13 states, in part that: "Machinery or equipment is used predominantly if over 50% of its use is directly in the production process."

The exemptions from sales and use tax granted by sections 1115(a)(12) and 1105-B of the Tax Law are applicable to commercial fishermen's purchases of machinery or equipment (vessels, etc.) and certain supplies and services when used directly and predominantly in the extracting of fish for sale.

However, petitioner is not predominantly engaged in the extraction of fish for sale, but rather is predominantly engaged in providing the use of its boat to paying customers for the purpose of sports fishing. Accordingly, petitioner does not qualify for the exemption under section 1115(a)(12) of the Tax Law.

Accordingly, since it fails to meet the criteria for any of the aforementioned exemptions, petitioner is liable for the payment of sales tax on its purchases, (other than purchases for resale).

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Additionally, it should be noted that section 1105(f)(1) of the Tax Law imposes a sales tax on "any admission charge to or for the use of any place of amusement . . . except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant . . ." Petitioner's charge to its customers for use of its fishing boat is deemed to be an admission to a sporting facility in which the patron is a participant and is exempt from tax in accordance with section 1105(f)(1) of the Tax Law.

DATED: March 15, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.