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ETA 3099.2009

Issue Date: February 2, 2009

Measure of the Enhanced Food Fish Tax for Persons with a Direct Retail Endorsement

What is the correct method for determining the measure of the enhanced food fish tax when the fish is sold pursuant to a direct retail endorsement attached to a commercial fishing license.

The law reads as follows:

The measure of the tax is the value of the enhanced food fish at the point of landing. RCW 82.27.020(3).

"Value" for the purpose of the enhanced food fish tax can generally be stated as the fair market selling price of an arms' length transaction consummated by unrelated parties. The value of the enhanced food fish is often measured as the selling price of the fish from the commercial fisher to the wholesaler. The selling price is recorded on the fish ticket, which is submitted to the Department of Fish and Wildlife for other regulatory purposes.

The enhanced food fish tax is imposed on the commercial possession of the enhanced food fish. The taxable event is the first [commercial] possession in Washington by an owner after the enhanced food fish has been landed. See RCW 82.27.020(1).

Background

Chapter 301, Laws of 2002, amended chapter 77.65 RCW to create a direct retail endorsement to a commercial fishing license. The direct retail endorsement entitles the commercial fisher to sell retail-eligible species directly to consumers, restaurants, or other similar food service businesses, provided that the commercial fisher meets certain regulatory requirements. "Retail-eligible species" are defined as commercially harvested salmon, crab, and sturgeon.

Prior to the enactment of the law creating a direct retail endorsement, commercial fishers who wished to sell their catch directly to someone other than a wholesale dealer were required to purchase a wholesale dealer's license. With a wholesale dealer's license, the commercial fishers were allowed to sell their catch to distributors, restaurants, and others. For tax purposes, the fisher's first commercial possession in Washington was the fishers' possession of the enhanced food fish under the wholesale dealer's license. Therefore, the value of the enhanced food fish as a measure of tax was reasonably stated as the amount that the commercial fisher would have received if the enhanced food fish had been sold to another licensed wholesale dealer at the point of landing.

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With the direct retail endorsement, the fishers anticipate making the same type of sales as they made under the wholesale dealer's license.

Conclusion

The direct retail endorsement will allow the commercial fisher to sell directly part or all of the catch to restaurants, consumers, and others. Although the retail endorsement entails its own regulatory framework administered by the Department of Fish and Wildlife, from a taxing perspective the endorsement allows for no transactions that differ from the type of transactions engaged in by a commercial fisher who holds a wholesale dealer's license.

For this reason, the Department concludes that for tax purposes the value of the enhanced food fish at landing with respect to fish sold pursuant to a direct retail endorsement is no different than the value of enhanced food fish sold absent a direct retail endorsement. That is, the value of the enhanced food fish is the amount that the commercial fisher would receive if the enhanced food fish were sold to a licensed wholesale dealer at the point of landing.
