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Tax Liability of Charter Boat Owners and Charter Agencies--Reporting Instructions

Is a taxpayer, who as agent for various owners is engaged in the business of contracting charter of their boats, liable for retail sales tax and business and occupation (B&O) tax when the charter boat owners have not registered with and reported applicable taxes to the Department of Revenue?

Assume Charter Service is engaged in a charter boat service in which it, as agent of several boat owners, seeks out prospective charterers and arranged, finalized, and supervised the charter of his principals' boats. Charter Service is an agent of the boat owners. The boat owners are not registered with the Department of Revenue.

RCW 82.04.050(4)(a) states, "The term shall also include: (i) The renting or leasing of tangible personal property to consumers." Thus, a boat charter is a retail sale. RCW 82.08.010(2) defines a seller to include agents. RCW 82.08.050 provides, "The tax . . . shall be paid by the buyer to the seller . . . shall be deemed to be held in trust by the seller until paid to the department..." Further, if the retail sales tax is not paid to the Department the seller is personally liable.

While Charter Service cannot compel a boat owner to register with the Department of Revenue, it is not prohibited from paying collected tax to its principal. But to avoid liability for the collected retail sales tax, Charter Service must make certain that retail sales tax is paid over only to persons who are properly registered to report the tax. Therefore, prior to relinquishing collected retail sales tax, Charter Service should get written, signed, and dated certification from the boat owner which states that the boat owner is registered with the Department of Revenue, including registration number, the boat owner's name and address, and a description of the boat.

Two reporting methods are available to Charter Service:

1. Charter Service may report the total value of charter rentals and retail sales tax collected on its regularly filed excise tax returns. It must report both under the (a) "retailing" B&O Tax classification on total charter rentals (in behalf of its clients) and (b) on his earned commission under the "service and other activities" B&O tax classification. The expense to the charter service of the "retailing" B&O tax can be avoided if the taxpayer collects it from the boat owner. Once this method is initiated the election can be withdrawn only upon notification to and approval by the Department of Revenue.

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2. Transfer of the retail sales tax by the charter service to the boat operator. (a) The boat owner must file excise tax returns reporting retail sales tax and "retailing" B&O tax. (b) Charter Service must report "service and other activities" B&O tax due on earned commissions. (c) Charter Service must furnish the Department of Revenue with complete information of all retail sales tax collected, the total value of the charter rental, and name and address of the person to whom paid.