

Revenue Ruling No. 15-001
January 16, 2015
Sales Tax

Isolated or Occasional Brokered Boat or Vessel Sales

Purpose: The purpose of this Revenue Ruling is to address whether the use of a third-party intermediary to broker the sale of a boat or vessel will disqualify a transaction from qualifying as an isolated or occasional sale under La. R.S. 47:301(10)(c)(ii)(bb).

Law:

La. R.S. 47:303(D) provides, in pertinent part, “Except as provided for in R.S. 47:305(D)(1)(i), the Secretary of the Louisiana Department of Wildlife and Fisheries shall not register or issue a certificate of registration on any new boat or vessel purchased in this state until satisfactory proof has been presented to him that all sales taxes provided by this Part...have been paid, nor shall he register or issue a certificate of registration on any boat or vessel brought into this state until satisfactory proof has been presented to him that all use taxes required by this Part...have been paid.”

La. R.S. 47:301(10)(c)(ii)(bb) provides that “the term “sale at retail” does not include an isolated or occasional sale of tangible personal property by a person not engaged in such business.”

La. R.S. 47:301(1) provides that the term ““business” includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect. The term “business” shall not be construed to include the occasional and isolated sales by a person who does not hold himself out as engaged in business.”

La. R.S. 47:301(12) provides, in pertinent part, that a ““sale” means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for a consideration...”

In R & B Falcon Drilling USA, Inc. vs. Secretary, Dept. of Revenue, 2009-0256 (La.App 1 Cir. 1/11/2010) 31 So.3d 1083, the Court held that a barge owner was deemed to be in the business of selling meals for the benefit of customer personnel and customer third-party personnel who were on the barges. In so holding, the Court found that “neither former La. R.S. 47:301(10)(c)(ii) nor La. R.S. 47:301(1) excludes from the definitions of “sale at retail” and “business” the frequent, regular, and repeated sales by a person, whether or not he holds himself out as engaged in business.”

Facts/Analysis: La. R.S. 47:301(10)(c)(ii)(bb) provides an exclusion from sales tax for isolated or occasional sales of tangible personal property by persons not engaged in such business. Occasionally, the use of a third-party intermediary to broker the sale of a boat or vessel is utilized. In such a scenario, the seller of the boat employs a third-party broker to market the boat or vessel on his/her behalf and to find a willing buyer. Below are examples of how the isolated or occasional sales exemption would apply when a broker is utilized.

Scenario 1

The seller of a boat or vessel employs a broker to market the boat or vessel on his/her behalf. The boat or vessel is titled in the name of the seller and remains titled in the name of the seller until title is transferred to the buyer. The seller does not hold him/herself out to be in the business of selling boats or vessels nor does the seller have a history of frequent, regular and repeated sales of boats or vessels. Finally, the boat or vessel was purchased by the seller for his/her own personal use. Such a transaction would qualify for the isolated or occasional sale exemption provided the buyer could provide sufficient documentation to establish the above criteria. Sufficient documentation includes, but is not limited to, a canceled check from the buyer to the seller and a bill of sale indicating title is being transferred from the seller to the buyer or the prior owner's certificate of registration showing his or her transfer of ownership to the buyer.

Scenario 2

The seller of a boat or vessel employs a broker to market the boat or vessel on his/her behalf. The seller does not hold him/herself to be in the business of selling boats or vessels nor does the seller have a history of frequent, regular and repeated sales of boats or vessels. In addition, the seller purchased the boat or vessel for his own use. However, the boat or vessel is not titled and has been relocated to the brokers' lot so that it may be viewed there by interested buyers. Under these circumstances, it is presumed the broker has taken ownership of the boat or vessel because the seller has transferred possession of the boat or vessel from him/herself to the broker in exchange for payment-consideration-either beforehand or on the condition that the broker find a willing buyer. As such, the broker has become the seller of the boat or vessel and the transaction will not qualify for the isolated or occasional sale exclusion.

Conclusion:

The use of a broker will not necessarily disqualify a transaction from qualifying as an isolated or occasional sale as long as the seller meets the following criteria: 1.) the seller does not hold him/herself out to be engaged in the business of selling boat or vessels; 2.) the seller does not have a history of frequent, regular and repeated sales of boats or vessels; 3.) the seller maintains title, if the boat or vessel is titled, or possession, if the boat or vessel is not titled; and 4.) the seller purchased the boat or vessel for his/her own use. Further, to qualify a transaction as an isolated or occasional sale under the provisions of La. R.S. 47:301(10)(c)(ii)(bb), a buyer must submit documentation, such as a cancelled check from the seller to buyer and a bill of sale indicating title is being transferred or the prior owner's certificate of registration showing his or her transfer of ownership to the buyer.

Tim Barfield

Secretary

A Revenue Ruling is issued under the authority of LAC 61III.101 (C). A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.