

**Revenue Ruling
No. 06- 001
April 7, 2006
Sales and Use Tax**

**Charter Boat Activity and the Sales Tax Exemption for Commercial Fishermen
under La. Rev. Stat. § 47:305.20**

The purpose of this revenue ruling is to clarify that charter boat activity does not qualify as commercial fishing pursuant to La. Rev. Stat. § 47:305.20.

Issue

Is charter boat activity “commercial fishing” for § 47:305.20?

Law

La. Rev. Stat. § 47:305.20 provides a state sales, use, lease, and services tax exemption for any Louisiana resident domiciled in Louisiana who possesses a valid Louisiana fishing license(s) and who owns or operates a vessel operated primarily for the conduct of commercial fishing as a trade or business where the Department of Wildlife and Fisheries has determined the vessel will be used predominantly and principally for commercial fishing as a trade or business and whose catch is for human consumption. It further states that “[p]ossession of a commercial license issued by the Department of Wildlife and Fisheries shall not be used as the sole determination that a vessel will be used predominantly and principally for commercial fishing ventures.”

The regulations of the Louisiana Department of Wildlife and Fisheries define both “charter boat fishing guide” and “commercial fisherman” and have different licensing requirements for the two classes or individuals. A commercial fisherman is “any person who derives income from the harvesting of living aquatic resources for commercial purposes.” A charter boat fishing guide is “any person who operates a vessel for hire and derives income from the bringing of recreational fishermen upon saltwater areas within the state for the purpose of taking fish.”

La. Rev. Stat. § 56:302.10 (A) provides as follows:

No person shall sell or barter any fish that has been taken recreationally or under the authority of any type of recreational fishing license or with any recreational gear.

Analysis

Neither the Department of Revenue nor the Department of Wildlife and Fisheries defines “commercial fishing.” The common usage of commercial fishing is the business of extracting fish or other seafood from salt or fresh waters for the commercial purpose of selling such fish or seafood at wholesale or retail. Therefore, for a vessel to be “operated primarily for the conduct of commercial fishing” as required by § 47:305.20, at least fifty percent of the usage of the boat must be for extracting fish or other seafood from salt or fresh waters for the commercial purpose of selling such fish or seafood at wholesale or retail.

Although fish and seafood are caught on charter boats, the service provided by a charter-fishing guide is the provision of the charter boat and the guide’s knowledge and expertise of the area, the best bait for a particular type fish, and proper fishing techniques. Aside from the expertise the guide provides, guides often clean the fish and provide necessary ice and storage for the

customer's catch. The price paid for the service and use of the charter boat is not dependent on the number or pounds of fish or seafood caught but is based on the time that the customer spends onboard the vessel with the fishing guide.

Ruling

Charter boat operators are not predominantly engaged in the extraction of fish or seafood for sale, but rather are predominantly engaged in providing the use of boats to paying customers for the purpose of recreational fishing. For this reason, charter boat activity is not considered "commercial fishing" for the § 47:305.20 exemption. Although a charter boat operator could sell his catch for profit in contravention of La. R.S. § 56:302.10, which provides that fish or seafood caught recreationally cannot be legally sold, he would still have to prove that his fishing vessel was used more than fifty percent for commercial fishing in order to qualify for the § 47:305.20 exemption.

Conclusion

Commercial fishing is the business of extracting fish or other seafood from salt or fresh waters for the commercial purpose of selling such fish or seafood at wholesale or retail. The provision of charter boats for the purpose of facilitating customer's recreational fishing for a fee is not "commercial fishing." Therefore, charter boat activity does not constitute commercial fishing activity for the § 47:305.20 exemption.

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