

# **WASHINGTON YACHT TAX LAW OVERVIEW AND UPDATE**

## **NONRESIDENT EXEMPTIONS AND USE OF LLC'S**

### **NORTHWEST YACHT BROKERS ASSOCIATION**

**In-Person and Zoom Presentation – March 26, 2024**

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Fred Robinson is the principal attorney at Robinson Law Firm, practicing exclusively in yacht law. He has 40 years' experience representing clients on matters involving vessel ownership structures, LLC acquisitions, usage, and taxation. Robinson Law Firm has spearheaded review of regulations expanding tax exemptions for nonresident-owned boats in Washington, and continues to be at the forefront of legislation that impacts vessel transactions in the State.

*Disclaimer: This article is only a general overview and is not intended as legal advice. Consult a Washington-licensed attorney for analysis and application of the State laws to your specific circumstances.*

**Robinson Law Firm's practice focuses on representing yacht owners.** Its expertise includes: ownership structures for yacht acquisitions; limited liability company formations; state sales and use tax planning; yacht sales and acquisitions; LLC sales and acquisitions; multi-jurisdictional use of yachts; and related financing, insurance, offshore delivery, and other considerations. Based in Seattle, Washington, the firm's practice is national in scope representing owners resident throughout the United States and Canada acquiring or owning yachts primarily in Washington State, British Columbia, California, and Florida.

**Frederick Robinson** graduated from Seattle University (B.A. in Accounting) and from Santa Clara University (J.D.). His combined legal and tax expertise includes a Master of Laws in Taxation (LL.M) from the University of Florida, his having worked with the Internal Revenue Service and two international public accounting firms and his having passed the C.P.A. exam. He has practiced law for more than 40 years advising yacht owners and representing the industry in shaping tax and other yacht industry policies in Washington State. **Erin Pedras** has 15 years of paralegal experience and **Yachi Liang** 10 years of paralegal experience.

# **I. Washington Retail Sales and Use Taxes – Overview and Nonresident Owner’s Exemptions**

## **A. In General**

### **1. Retail Sales Tax**

Retail sales tax is imposed on retail sales of **tangible personal property** and certain services provided to consumers in Washington. The tax only applies to yachts only if **“delivery”** is made in Washington state. The tax rates range from 7.0% to 10.25%, depending on where the sale occurs within the state.

“Sale” includes: any transfer of the ownership, title or possession, including renting or leasing.

**Yacht trade-in tax rules** apply for both retail sales tax and use tax purposes. The tax base in the boat being purchased is reduced by the value of the boat traded in. Sales or use tax need not have been paid on the trade-in boat in order to get the sales and use tax reduction.

### **2. Use Tax**

Use tax is imposed on yachts purchased outside Washington, but **“used”** (meaning more presence) in the state. The tax rates are the same as those for retail sales tax purposes.

Generally, the tax base is the fair market value of the yacht at the time of first taxable use in Washington.

Use tax liability arises only on the first taxable use within Washington. If the first use is not taxable due to exemptions applying, then the first taxable use may occur on a later visit to Washington.

**A credit is allowed against the Washington use tax for sales tax paid in Washington and sales tax or use tax paid in other states, provinces of Canada or other countries.**

## **B. Sales to Nonresidents of Washington**

### **1. Retail Sales Tax**

#### **a. In General**

The retail sales tax applies to sales to consumers if the buyer first takes receipt of the yacht in Washington.

“Receipt” means the first time the buyer or its agent takes possession or control of the yacht.

b. Retail Sales Tax Exemptions for Sales to Nonresidents for Use Primarily Outside Washington:

(1) Sales to Residents of Other States for Use Outside Washington

Even if delivery occurs in Washington, retail sales tax does not apply to the sale of a yacht requiring Coast Guard documentation or registration within the state of principal use.

(2) Sales to Residents of Foreign Countries for Use Outside Washington

Even if delivery occurs in Washington, retail sales tax does not apply to the sale of a yacht to residents of foreign countries for use outside Washington.

(3) Common Requirements for the Above Exemptions:

Yacht must leave Washington waters within 45-days of delivery (this can be a temporary departure);

Buyer must provide proof that he/she is a resident of another state or foreign country; and

Seller, at the time of sale, must retain a completed exemption certificate provided by the Buyer.

c. Sales to Nonresident **Individuals** Who Obtain One-Year Use Permits

Nonresident individuals who purchase yachts in Washington 30 feet or longer are exempt from sales tax on the yacht, provided they obtain a one-year use permit. A use permit is good for only one year and is not renewable. The use permit must be purchased from the selling broker at the same time the vessel is purchased. The permit cannot be purchased from another broker. A buyer at the time of purchase is required to make an election not to use the other exemptions for nonresidents.

The yacht must leave the state before the one-year permit expires. The owner cannot bring the vessel back in the state for any reason within 24 months after the permit’s expiration date. **Note:** The vessel cannot

even be brought into the state and left with a local broker for sale within that 24-month period. The owner loses and the broker loses.

If an individual obtains a one-year use permit and the yacht is in Washington within 24 months after the use permit expires, retail sales tax applies retroactively to the original selling price of the yacht, plus interest.

Brokers have certain responsibilities in issuing these permits. If not issued properly, brokers can be assessed the retail sales tax the buyer would have paid.

## 2. Use Tax

### a. Yachts Delivered in Washington That Fail to Leave the State Within 45-Days

Use tax is due on the use by a nonresident of a yacht delivered in Washington and first used within the state for more than 45-days, if retail sales tax was not paid. The use tax is due even if the nonresident exemption form was completed and the yacht otherwise qualified for the retail sales tax exemption at the time of purchase because it was anticipated that the yacht would be taken out of state within 45-days of delivery.

### b. Yachts Purchased Outside Washington or Purchased in Washington and Reentering the State Following Timely Departure

#### (1) In General

Use tax does not apply to the “temporary use” of a yacht brought into Washington by nonresidents for personal use or enjoyment.

#### (2) Yachts Owned By Domestic (US) or Foreign Nonresident Individuals or Entities – General Rule

Nonresident individuals and entities may bring a yacht into Washington for their own use or enjoyment without use tax liability, provided such use does not exceed 6-months in any 12-month period, assuming two 60-day permits are obtained. This is not a calendar year determination. Attention must be paid to the 60-day time periods in each of the two 60-day permits.

The exemption applies to nonresident vessels that are currently registered or numbered under the laws of the state (excluding Washington) or country of principal operation, has been

issued a valid number under federal law, or has a valid United States customs service cruising license issued under 19 C.F.R. Sec. 4.94.

By the sixty-first day of use in Washington, the owner must obtain a Sixty-Day Temporary Identification Document (“permit”) from the Department of Licensing. The permit is valid for a specific two-month period.

A second permit can be obtained within any 12-month period. Accordingly, presence in Washington can be up to 6-months in any 12-month period. The use tax exemption is conditioned on having the permit(s) on a timely basis.

The owner can have someone else obtain the permits on his or her behalf if it is more convenient to avoid the need to travel to Washington to get one.

Note: If the owner is a nonresident entity, the vessel must be between 30 and 200 feet in length and there is a two-step process. The owner must first apply to the Department of Revenue for written approval to obtain a permit and upon approval, get the permit from the Department of Licensing. Permit fees for nonresident entity owned yachts are determined based on a sliding scale per foot in length.

(3) Yachts Owned by Nonresident **Individuals** – **One Year Permits**

Yachts 30 feet or longer in length owned by nonresident individuals and in the state with a use permit, are exempt from use tax.

If the yacht is purchased in Washington from someone other than a dealer or broker or is purchased out of state and brought into Washington, the use permit must be obtained within 14-days of purchase or its entry into Washington.

If the yacht is in Washington for any reason within 24 months after the use permit expires, use tax applies based upon the value of the yacht at the time it was first brought into the state. Interest also applies.

## II. Use of Limited Liability Companies to Minimize or Eliminate Sales and Use Taxes

A. Two Key Principles

1. Limited liability companies have a legal existence that is separate and distinct from that of their owners; and
2. An owner's interest in an LLC is characterized as an **intangible** property interest. This is in contrast to an owner's interest in a yacht which is **tangible** property.

B. Contrast the Sale of a Boat With the Sale of an LLC

1. Retail sales tax applies to sales of tangible personal property and certain services.
2. Because an ownership interest in an LLC is characterized as intangible property, sales tax does not normally apply to the sale of an LLC. There is a very limited exception as discussed in the next few paragraphs.
3. The exception in Washington provides generally, that if a tax paid boat is contributed into a wholly owned LLC "in concert" with a buyer of the boat in order to eliminate the buyer's sales or use tax liabilities, the Department of Revenue is authorized to recharacterize the buyer's purchase of the LLC ownership interest as if it was the purchase of the boat and assess sales or use tax on the buyer.

**Note:** Because the law requires the buyer and seller to have acted together "in concert" in contributing the boat into the LLC to avoid the buyer's tax liability, it has very limited application. Generally, to act "in concert" the buyer must be on scene and ready to make an offer, or have made an offer, when the boat is contributed into the LLC for the purchase of the LLC to become a taxable event.

4. Keep in mind that a buyer can form an LLC and purchase the boat in the entity or contribute it into an LLC to make the boat more marketable. It is only when the boat is contributed into an LLC "in concert" with the buyer, will an issue arise. **Note:** Any tax exposure is on the buyer and not the seller.
5. Because the vast majority of boats owned in an LLC are either acquired in the LLC initially or contributed into the LLC before the buyer is present, the Department of Revenue is rarely able to recharacterize the LLC purchase.
6. **Current Planning Opportunity:** If an individual or revocable trust (which is characterized as an individual under Washington tax law) purchased a boat and paid tax on it, the owner should consider contributing the boat into an LLC now. A "tax paid" boat owned in an LLC will be more marketable and likely will sell for a higher price.

C. Key Consideration for a Buyer in Making a Tax-Exempt LLC Purchase Owning a Boat to be Used in Washington.

Sales or use tax must have been paid in Washington, another state, Canadian province or another country on a boat owned in an LLC, to reduce or eliminate the tax in Washington. (This is not the same rule in California.).

D. The LLC Will Need to Maintain its Separate Existence from the Members of the LLC With:

- A separate bank account in its name used to pay the expenses of ownership and operation of the boat.
- Insurance taken out in its name with the individual named as an additional insured.
- Tax filings are not required unless the boat is used for charter.
- The only ongoing cost of maintaining an LLC in Washington is \$59 paid annually for the LLC's annual license renewal. (In California, the annual fee is \$800. For this reason, California LLC's are generally not used.)

E. Personal Liability Protection

LLCs might provide greater personal liability protection if there are personal injury or property damage claims that exceed insurance policy limits.



## A PRACTICAL GUIDE TO YACHTING IN THE PUGET SOUND

By Fred Robinson, Esq./ March 2024/ Blog Posts

Puget Sound is an estuary in the northwestern coast of Washington State, with approximately 2,500 miles of saltwater shoreline. A part of the Salish Sea, Puget Sound extends approximately 100 miles from the Strait of Juan de Fuca between Vancouver Island and Washington in the North to the city of Olympia in the South. It has a maximum depth of around 930 feet. It is the second largest estuary in the United States, behind Chesapeake Bay.

Fisherman's Terminal, located in Seattle's Ballard neighborhood, is home to the North Pacific Fishing Fleet. The cruise terminals in Seattle serve ships with scheduled service to and from Alaska. In 2023, Seattle hosted 291 cruises, with over 900,000 passengers visiting during the six-month cruise season.

### **Local Taxes**

Washington is one of only seven states without an income tax, and one of 46 with retail sales and use taxes. Washington provides sales and use tax exemptions for non-resident-owned yachts that are in the state for limited periods of time.

Retail sales tax on the purchase of a yacht in Washington is only a concern if delivery occurs in this State. Properly documented deliveries in Washington to nonresidents, followed by timely departure, are exempt from sales tax. Such vessels can return to Washington for certain periods of time.

Generally, nonresidents may have their yachts in Washington for up to 60 days in any consecutive 12-month period without exposure to tax. The exemption period may be extended by obtaining up to two 60-day permits within the 12-month period.

Vessel sales and use tax exemptions may also apply to nonresident-owned yachts that are in Washington exclusively for repair or refit work by filing Nonresident Vessel Repair Affidavits with the Washington Department of Revenue. Repair Affidavits are good for 60 days and are renewable.

### **Pilotage and Waivers**

Information on pilotage exemptions for vessels in Puget Sound are available on the Washington Board of Pilotage Commissioners' website, [www.pilotage.wa.gov](http://www.pilotage.wa.gov). A U.S. flag vessel on a foreign voyage (not including British Columbia) is not automatically exempt from Washington Pilotage (i.e., a vessel sailing under a registry endorsement), but certain such vessels may apply for an exemption with the Board.

### **Moorage.**

Moorage for vessels are available throughout the Puget Sound area. Lake Washington, the Ship Canal, and Seattle's Lake Union have fresh-water moorage. Seattle has moorage for yachts up to 300 feet in length. Among marinas in Seattle with moorage for superyachts and other vessels are

Elliot Bay Marina, Salmon Bay Marina, and the Port of Seattle. Temporary moorage is also available at many shipyards, repair facilities, and other marinas in Seattle.

### **Provisioning**

Seattle's Pike Place market, located above the downtown waterfront, is not only a very popular tourist stop; it also offers a great selection of fresh local foods. For those needing large quantities and/or long-term provisions, there are several provisioning companies based in Seattle. Also, Seattle boasts Costco's first warehouse location, just three miles south of the downtown core.

### **Local Sources**

The Northwest Marine Trade Association and the Pacific Northwest Captain's Association (Dan Wood) are good sources of knowledge and information on the Northwest region's yachting industry, including local yacht brokers and locally based shipyards, marinas, and repair facilities.

### **Yacht Builders and Repairs**

Washington State is home to a number of custom and production yacht builders. Among the biggest builders are Christensen Shipyard, Delta Marine Industries, Nordlund Boat, and Westport Shipyard. Many refit and repair facilities are accessible throughout Puget Sound, including those located in Port Angeles and Westport.

### **Air Travel**

Seattle is home to Alaska Airlines. Sea-Tac Airport is 15 miles south of downtown Seattle. Boeing Field, located in South Seattle, is home to private flight, charter and helicopter services, and also offers passenger service in smaller airplanes, including seaplanes. Kenmore Air's fleet of seaplanes have regularly scheduled and charter flight services throughout Puget Sound and the San Juan Islands in Washington, and many locations in British Columbia.

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## THE MARAD SMALL VESSEL WAIVER PROGRAM OF THE U.S. BUILD REQUIREMENT

By Fred Robinson, Esq. / March 2024/ Blog Posts

Generally, the “coastwise trade” laws prohibit the transportation of passengers or merchandise between points in the United States in any vessel other than one:

- built in the U.S.;
- documented with the U.S. Coast Guard; and
- owned by persons who are U.S. citizens.

The Passenger Vessel Services Act authorizes the U.S. Maritime Administration (“MARAD”) to waive the U.S. build requirement in certain situations. These waivers are known as Small Vessel Waivers. To be eligible for a Small Vessel Waiver, the vessel must:

- be owned by a U.S. citizen or organization
- be at least three years old;
- intend to carry passengers only (not cargo);
- carry no more than 12 passengers at a time when in service; and
- satisfy a series of separate U.S. Coast Guard requirements.

Application for the waiver is available online. It takes about three months for a final decision to be made. Once a waiver is obtained, it becomes part of the vessel’s documentation and stays with the vessel if it is sold.

MARAD will not issue a waiver if it will cause an undue adverse effect on vessels built in the United States and already operating in a small business.

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