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**STATE AND PROVINCIAL EXCISE TAXES:  
California to Alaska**

**AMERICAN SUPERYACHT  
FORUM 2009**

**Sponsored by The Yacht Report Group**



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**Fred Robinson’s** practice emphasizes worldwide yacht transactions, including: construction; purchase and sale; leasing; tax planning and audit representation; foreign and U.S. registration; and offshore delivery. Mr. Robinson is a shareholder with the law firm of Carney Badley Spellman. He graduated from Santa Clara University School of Law in 1980 (J.D.). He has combined legal and tax expertise having obtained a Master of Laws in Taxation (LL.M) from the University of Florida (1981) and having worked with the Internal Revenue Service and two international public accounting firms. Mr. Robinson is a member of: Washington State Society of Certified Public Accountants; American Bar Association, Section of Taxation; Northwest Yacht Brokers Association; B.C. Marine Trades Association; Florida Yacht Brokers Association; Association of Washington Business, Tax and Fiscal Policy Council, Past Chairman; State Capital Group,

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## ***State and Provincial Excise Taxes: California to Alaska***

### **I. California State Sales and Use Taxes.**

#### **A. In General.**

In California, sales of tangible personal property are subject to sales tax or use tax, unless the law provides an exemption. Effective April 1, 2009, the sales and use tax rates are the same and range from 8.25% to 9.75%. Yachts purchased from licensed dealers are generally subject to sales tax, which is collected at the time of purchase.

Use tax is normally the responsibility of the purchaser. Use tax applies to the cost of yachts purchased from non-dealers or from outside California for use in the state. If sales tax is paid, use tax is not due.

If the first use of the yacht occurs in California, use tax may apply even if the purchaser is not a resident of the state.

#### **B. Yachts Purchased or Delivered Out of State – Not Intended for Use in California.**

##### **1. Effective On and After September 30, 2008.**

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

###### **(i) Application to California Residents.**

A yacht purchased outside of California (more than 3 miles from the coast line) by a California resident and brought into California within 12-months from the date of its purchase is rebuttably presumed to have been purchased for use in California and is subject to tax.

The presumption may be rebutted by evidence that the yacht was purchased for use outside the state during the first 12-months of ownership. The evidence may include, but is not limited to, evidence of registration of the yacht outside the State of California.

Entry of a yacht into California within 12-months from the date of its purchase only for repair, retrofit or modification does not violate this provision, if usage during the period of repair, retrofit or modification does not exceed 25 hours of "sailing time." See Section I.B.4.b. below for further explanation.

A "resident" is any "person", including an entity, who shows an intent to live or be located in California on more than a temporary basis. Presence in California for 6-months or more in any 12-month period creates a rebuttable presumption of residency.

The 12-month rule does not apply to yachts used in interstate or foreign commerce; i.e. carrying persons across state or national boundaries for a charge.

(ii) Application to California Nonresidents.

A yacht purchased outside of California by a nonresident of the state and brought into California is subject to tax if either:

- The yacht is subject to California property tax during the first 12-months of ownership; or
- The yacht is used or stored in California more than 6-months during the first 12-months of ownership.

b. Limited Exclusion for Repair Work – Applies to Both Residents and Nonresidents.

A yacht that is purchased out of state and brought into California during the first 12-months of ownership for the limited purpose of repair, retrofit, or modification is not presumed to have been purchased for use in California if the purchaser, or purchaser's agent, has no more than 25 hours of "sailing time" on the yacht in California for incidental or other use. The calculation of sailing time does not include sailing time logged after the completion of the yacht's repair, retrofit, or modification for the sole purpose of returning or delivering the yacht to a point outside California. The law does not provide a set limit on the length of time the yacht can be in California for the repair, retrofit or modification. The work

should be significant and ongoing relative to the length of time it is in the state for such work. The yacht should leave California soon after the work is completed. The removal from the state should be documented in a similar method used for offshore deliveries.

- The calculation of 25 hours of sailing time begins upon entry into the state for repair, retrofit or modification and ends when the repair, retrofit or modification is complete.
- “Sailing time” means operational time logged by the yacht’s owner or the owner’s agent.
- “Sailing time” excludes the time spent for the sole purpose of removing the yacht from California waters. Note: The removal time should be reasonable in duration.

2. Delivery.

California does not have a “sail-away” exemption. For a yacht to qualify for the use tax exclusion, title (ownership) and possession of a yacht must transfer to the purchaser outside of California. When a purchaser exercises control over the yacht in California prior to the planned out-of-state delivery, the California Board of Equalization will likely argue that ownership transfers to the purchaser in California.

- If any person other than the seller, or an agent acting on behalf of the seller, delivers the yacht from California to the purchaser at any out-of-state location, ownership is likely considered to have transferred to the purchaser in California, and California use tax applies.

**II. Oregon State Taxes.**

A. Oregon State Sales and Use Taxes.

Oregon does not have a sales and use tax.

B. Oregon State Income Taxes.

Oregon does have a state income tax with a maximum rate of 9%, but it is not a significant concern for yacht owners.

**III. Washington State Sales and Use Taxes.**

A. In General.

1. Retail Sales Tax.

Retail sales tax is imposed on retail sales of **tangible personal property** made to consumers in Washington. The tax only applies if “delivery” of the yacht occurs in Washington waters. The tax rates range from 7.5% to 9.5%, depending on where the sale occurs within the state.

The tax is required to be collected by the seller from the buyer and remitted to the Department of Revenue.

Yacht trade-in rules apply for both retail sales tax and use tax purposes.

2. Use Tax.

Imposed on yachts purchased outside Washington, but “used” on Washington waters. The tax rates are the same as those for retail sales tax purposes.

A credit is allowed against the Washington use tax for retail sales tax or use tax paid in other states, provinces of Canada or other countries, prior to the use of the yacht in Washington.

Use tax liability arises only on the first taxable use within Washington.

B. Sales to Washington Nonresidents .

1. Retail Sales Tax.

a. General Rule.

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

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

b. Exemptions for Sales to Nonresidents for Use 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) Exemption Requirements:

The following requirements apply to both exemptions:

- (a) Yachts must leave Washington waters within 45-days of delivery;
- (b) Buyer must provide proof that he/she is a resident of another state or foreign country; and
- (c) Seller, at the time of sale, must retain a completed exemption certificate.

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 use permit. A use permit is good for 12-months and is not renewable. A purchaser at the time of purchase must make an election to use this exemption or one of the exemptions discussed immediately above.

Individuals must wait 24-months from the expiration of a use permit before claiming one of the other use tax exemptions for their yachts.

If an individual obtains a use permit for a yacht and uses the yacht in Washington after the use permit expires, retail sales tax applies on the original selling price of the yacht, with interest retroactive to the purchase date.

2. Use Tax.

a. Yachts Delivered in Washington That Do Not Leave the State Within 45-days of Delivery.

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. Note that the use tax is due even if the yacht 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 Brought Back into Washington Waters Following Timely Departure Within 45-Days of Delivery.

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

(1) Yachts Owned by Nonresident Entities.

No use tax is due if the yacht is used for personal enjoyment within Washington for not more than 60-days in any 12-month period.

(2) Yachts Owned By Nonresident Individuals.

Nonresident individuals 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.

(3) Exemption Requirements for Yachts Owned by Nonresident Individuals:

Applies to: yachts issued a valid number under federal law or by the state of principal operation, that are brought into Washington for the individual owner’s use or enjoyment while temporarily within the state.

By the sixty-first day of use in Washington, owner must obtain a Sixty Day Temporary Identification Document (the “permit”) from the Department of Licensing. The permit is valid for 2-months.

Can get a second permit within any 12-month period. Accordingly, can extend presence in Washington for up to 6-months in any 12-month period.

c. Exemption for Yachts 30 feet or longer.

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

If a nonresident individual continues to use a vessel in Washington after the use permit expires, use tax applies based upon the value of the yacht at the time it was either purchased or first brought into Washington.

d. Yachts in Washington For Repairs.

Yachts owned by nonresidents and in the state exclusively for repairs are exempt from use tax if removed from the state within 60-days.

If more than 60-days are needed for repairs, then the exemption may be extended for successive 60-day periods by filing the Nonresident Out-of-State Yacht Repair Affidavit with the Department of Revenue.

- A new Nonresident Out-of-State Yacht Repair Affidavit must be filed every 60-days.

C. Leasing of Yachts In Washington Waters By Residents or Nonresidents.

1. Purchase of Yacht.

The purchase of a yacht exclusively for bareboat leasing is not a retail transaction, but rather a wholesale transaction. For state excise tax purposes, the definition of “sale” includes a lease. Therefore, retail sales tax does not apply at the time of purchase of the yacht, because the purchase is for the purpose of “re-selling” in the form of a bareboat lease.

2. Leasing in Washington Waters.

a. Retail Sales Tax on the Lease Payments.

Retail sales tax must be paid on the lease payments while the yacht is in Washington waters.

- To the extent the yacht is used outside Washington while leased, Washington retail sales tax does not apply to the lease payments, because that portion of the “lease/sale” does not occur within the state.

b. Use Tax on the Yacht Itself?

Bareboat lease – no use tax is due on the fair market value of the yacht itself.

Charters with crew provided – a lease of a yacht in Washington waters with the crew provided by the yacht owner/lessor is considered a use of the yacht by the owner/lessor.

- As a general matter, on crewed charters, the use tax is due on the full fair market value of the yacht. However, see the reduced valuation rule in Section III.C.3 below.
- Planning: In order to minimize the possibility of the lease being characterized as a charter with crew provided, the party leasing the yacht from the owner/lessor should hire and pay the crew directly. Generally, if the owner/lessor is not providing the crew with the yacht, it is characterized as a bareboat lease.
- Further Planning: The owner/lessor might want to consider getting an advance ruling/written opinion from the Washington Department of Revenue prior to entering into the lease or coming into Washington waters. Rulings are binding on both the taxpayer and the Department of Revenue.

3. Special Use Tax Valuation Rule for “Business Assets” Temporarily Within Washington.

In the case of property owned by a user engaged in business outside the state which is brought into the state for no more than 180 days in any 1-year period and which is temporarily used for business purposes by the person in this state, the value of the property is an amount representing a reasonable rental for the use of the property (rather than the property’s fair market value), unless the person has paid retail sales tax or use tax on the property’s value in another jurisdiction.

This reduced valuation rule likely applies to yachts used for charter purposes outside Washington that enter the state for charter purposes.

**IV. Province of British Columbia Provincial Sales Tax (“PST”) and Canadian Goods and Service Tax (“GST”).**

A. British Columbia Provincial Sales Tax.

1. PST Rate of Tax.

The PST rate is 7.0%.

2. Who is Responsible to Collect and Remit PST?

PST must be collected on yachts delivered within the province of B.C. If the yachts are being delivered to a location outside of B.C., usually PST does not have to be collected.

PST must be paid on certain purchases and leases of yachts used in running a business. If the yacht is bought outside of the province by a B.C. resident and PST was not collected by the seller, PST must be paid by the resident owner to the province when the yacht first enters the province.

3. Yachts Purchased by Nonresidents of British Columbia.

a. Purchased for Use Outside the Province.

Yachts purchased in B.C. by nonresidents for their own use outside the province may only be purchased exempt from PST if one of the following criteria is met:

- The yacht is delivered by the seller to a location outside the province, without any prior use by the purchaser in the province and an Out-of-Province Delivery Exemption Form is completed; or
- The yacht is delivered by the seller to a common carrier for shipment to the purchaser at a location outside the province.

b. Delivery in British Columbia.

No PST exemption applies when a nonresident purchaser takes delivery of the yacht in B.C., even if the yacht is immediately removed from the province.

c. Purchases for Resale.

If the yacht is sold to a nonresident for the purpose of resale, a Certificate of Exemption form must be used.

d. Yachts Purchased Outside the Province by a B.C. Resident.

PST applies to yachts purchased outside the province by a B.C. resident who subsequently brings it into B.C. for use. Tax is paid upon entry and is collected by the Canada Border Services Agency.

4. Purchases By Nonresidents of Taxable Services in British Columbia.

PST applies to charges for services provided to nonresidents to install, repair, refinish or maintain the yacht while visiting B.C.

A PST exemption applies to the charge for such services when the yacht is brought into B.C. solely to receive taxable services and immediately after receiving the services, is removed from the province.

5. Yachts Brought Into the Province by Nonresidents.

Effective February 20, 2002, the PST was amended to exempt yachts brought into the province for long-term personal use by nonresident individuals, provided they are not used for business purposes. Prior law had been much more restrictive.

6. Yachts Purchased for Leasing or Charter.

a. Definitions.

Lease: The rental of a yacht alone, without the provision of an on-board skipper, crew or other person.

Charter: The rental of a yacht including the on-board services of a skipper, crew or other person.

b. PST on Purchase?

(1) Yachts Used Solely for Leasing.

When a yacht is purchased for the sole purpose of leasing, it can be purchased without PST if the purchaser's registration number is given to the vendor.

(2) Yachts Used for Chartering.

When a yacht is purchased for chartering or mixed leasing and chartering, PST is payable on the purchase price.

c. Application of PST to Yacht Lease Payments.

(1) Yachts Leased to Individuals.

When the owner (lessor) leases a yacht to a person (lessee), the lessor must collect PST on all lease payments.

Charges for fuel and optional insurance, which are not part of a normal lease charge, are not subject to PST if they are separately stated on the lessee's invoice.

(2) Yachts Leased to a Lease Outlet.

When the owner (lessor) leases a yacht to a person (lessee) who will be re-leasing it to others, the lessor is not required to collect PST on the lease payments; provided the registration number of the lessee is noted on all lease invoices.

The lease outlet is responsible for collecting PST on payments received on the re-lease of the yacht.

(3) Yachts Leased to Charter Outlets.

When the owner (lessor) leases a yacht to a person (lessee) who will be providing charter services, the owner must collect PST on all lease payments.

d. Application of PST to Yacht Chartering.

PST is not due on charter payments.

e. Leased Yachts Brought into British Columbia by the Lessees.

Where a yacht is leased from an out-of-province lessor who is not registered as a lessor in British Columbia, the lessee is required to self-assess and remit the PST due on all lease payments directly to the provincial government.

If the out-of-province lessor is registered as a lessor in British Columbia, the lessor is required to pay the PST to the lessor.

B. Canadian Federal Goods and Services Tax ("GST").

1. GST Rate of Tax.

The GST rate is 5% of the purchase price or fair market value.

2. Delivery of Yachts in Canadian Waters.

The delivery of yachts in Canadian waters is subject to GST, even if delivered to a nonresident who intends to export the vessel.

3. Delivery of Yachts in U.S. Waters.

No GST must be paid on the delivery of a yacht in U.S. waters even if it is a Canadian dealer/seller and a Canadian purchaser. The Canadian purchaser will have to pay GST tax on the yacht at the time it enters Canada.

4. Nonresidents Pleasure Cruising in Canadian Waters.

The yacht must report to Canadian Customs upon entry. However, no GST is paid on the yacht. It is recommended that the yacht leave Canadian waters at least every 60-days, then it can re-enter Canada.

5. Nonresidents Chartering in Canadian Waters.

Charter revenue is subject to GST only if the owner of the yacht has more than \$30,000 gross revenue from worldwide chartering activities. Otherwise, GST does not apply to the charter revenue.

6. Canadian Resident Buys a Yacht in the United States and Takes it Into Canada.

GST will be paid at the border upon entry.

**V. Alaska State Taxes.**

A. Alaska State Sales and Use Taxes.

Alaska does not have a state level sales and use tax. However, certain of its cities and boroughs do have sales taxes. Examples include the following:

Anchorage – none.

Juneau –

5% sales tax, but no use tax.

Caps on Tax Base:

\$7,500.00 on a single sale.

\$7,500.00 on a single service performed within 1-month.

Charter revenue is taxable.

Ketchikan –

City – 6% sales tax.

Borough – 2 ½% sales tax.

Charter Revenue – Only the first \$1,000 of revenue per day is subject to tax. The charter must either begin or end in Ketchikan to be taxable.

Yacht Sales – If a dealer is involved, the sale is subject to sales tax. However, only the first \$1,000 of the sales price is subject to tax.

B. Alaska State Income Tax.

Alaska does not have a state income tax.

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Mr. Robinson's practice emphasizes world-wide yacht transactions, including yacht: construction; purchase and sale; leasing; like-kind exchanges; state tax planning and audit representation; foreign and U.S. registrations; and offshore delivery.

### **Education**

Seattle University, B.A., Business Administration, 1976; University of Santa Clara School of Law, J.D., 1979; University of Florida, LL.M. (Taxation), 1981.

### **Admitted to Practice**

Washington, 1980; Tax Court of the United States, 1981; U.S. District Court, Western District of Washington, 1981.

### **Professional Associations**

Washington State Society of Certified Public Accountants; American Bar Association, Section of Taxation; Association of Washington Business, Tax and Fiscal Policy Council, Past Chairman; State Capital Group, Tax Section, Chairman (1993-1994, 2000-2005); Seattle University Albers School of Business Alumni Relations Board; Northwest Yacht Brokers Association, B.C. Marine Trades Association; Florida Yacht Brokers Association; International Superyacht Society; and Pacific Northwest Yachting Association.

### **Publications**

"*Washington State Business and Occupation Tax*," American Bar Association, Section of Taxation, Committee on S Corporations (2002); "*Explaining Washington State's Trade-In Credit for Vessels*," The Triton (September 2006); and "Laws and Regulations of the Certified

Professional Yacht Brokers (CPYB) Body of Knowledge," National Yacht Brokers Certification Program (2007).

## **Presentations**

***“Worldwide Superyacht Market”*** Seattle Yacht Club, Seattle, Washington, (2009)

***“American Superyacht Forum”*** Seattle, Washington (2009, Sponsored by The Yacht Report.

***“West Coast Yacht Transactions, Build Contracts and Tax Planning: California to Alaska”*** International Superyacht Society Annual Meeting, Ft. Lauderdale, Florida (2008)

***“When Yachts Change Flags: Coast Guard and Foreign Registry Documentation Issues Related to International Sales of Yachts”*** California Yacht Brokers Association Legal Seminar, Yacht Sales and the Law XI (CYBA), Newport Beach, California (2008)

Forum on ***“Legal, Tax and Administrative Considerations of Yacht Ownership”*** Project USA, San Diego, California (2007), Sponsored by The Yacht Report

***“Laws and Regulations of the Certified Professional Yacht Brokers (CPYB) Body of Knowledge”*** National Yacht Brokers Certification Program (2007)

***“State Tax Update”, “Offshore Registration and Flagging” and “Reflections on the Super Yacht Industry”*** Northwest Yacht Brokers Association Annual Seminar, Lynnwood, Washington (2007)

***“Reducing Sales and Use Taxes on West Coast Yachts” and “Offshore Yacht Registration / Flagging”*** First Annual International Conference of Professional Yacht Brokers, Nashville, Tennessee (2007), Co-Sponsored by Yacht Brokers Association of America (YBAA), Northwest Yacht Brokers Association (NYBA), British Columbia Yacht Brokers Association (BCYBA) and Ontario Yacht Brokers Association (OYBA)

***“Offshore Yacht Registration / Flagging”*** Rainier Club (2006), Co-Sponsored by Yacht Path International, Pacific Maritime Title, First American Transportation Title Insurance Co., and the Northwest Yacht Brokers Association (NYBA)

***“Why Offshore Registration is Gaining Popularity On the West Coast”*** California Yacht Brokers Association (CYBA) (2006)

***“Legal Issues Forum”*** Northwest Marina Conference, Northwest Marine Trade Association (NMTA) (2006)

***“Minimizing Tax Effects On Yachts On the West Coast: California, Oregon, Washington, British Columbia and Alaska”*** Ft. Lauderdale International Boat Show (2006), Co-Sponsored by Yacht Path International and the Florida Yacht Brokers Association (FYBA)

***“West Coast Yacht Taxation”*** Northwest Yacht Brokers Association (2005)

***“Vessel Sales and Use Tax in Washington and Oregon”*** California Yacht Brokers Association Legal Seminar, Yacht Sales and the Law (CYBA) (2005)

***“What Florida Yacht Brokers & Their Customers Should Know About Selling & Chartering Yachts In the State of Washington”*** Florida Yacht Brokers Association Charter Professionals (2005)

***“The Certified Professional Yacht Broker Exam: A Law Primer to Become a CPYB” and “Offshore Delivery Today: Is There Any Hope for a Tax Exemption?”*** California Yacht Brokers Association Legal Seminar Yacht Sales & The Law (CYBA) (2004)

***“Washington State Excise Taxes on Out-of-State Businesses Selling Products Into Washington”*** Lake Union Boats Afloat Shows (2004)

***“Taxation of Private Yachts in Washington Waters – What Mariner Owners Should Know”*** Northwest Marina Conference (2003)

***“International and State Tax Law”*** Northwest Yacht Brokers Association Certification Seminar (2002)

***“Selling and Chartering Watercraft in Washington”*** Northwest Yacht Brokers Association Seminar (2001)

***“Vessel Taxation in Washington and British Columbia”*** California Yacht Brokers Association Legal Seminar (CYBA) (2001)