

280-RICR-20-70-40

TITLE 280 – DEPARTMENT OF REVENUE

CHAPTER 20 – DIVISION OF TAXATION

SUBCHAPTER 70 – SALES AND USE TAX

PART 40 – Commercial Fisherman and Fishing Vessels

40.1 Purpose

This regulation implements R.I. Gen. Laws Chapter 44-18. This regulation provides for the application of sales and use tax to commercial fishing activities.

40.2 Authority

This regulation is promulgated pursuant to R.I. Gen. Laws Chapter 44-18 as amended, R.I. Gen. Laws §§ 44-1-4, 44-18-1 and 44-19-33. Additionally, these regulations have been prepared in accordance with the requirements of R.I. Gen. Laws Chapter 42-35 - Rhode Island Administrative Procedures Act.

40.3 Application

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department of Revenue to effectuate the purposes of R.I. Gen. Laws Chapter 44-18 and other applicable state laws and regulations.

40.4 Severability

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

40.5 Definitions

- A. "Commercial fishing" means the taking or the attempting to take any fish, shellfish, crustacea, or bait species with the intent of disposing of them for profit or by sale, barter, trade, or in commercial channels.
- B. "Net tons" means gross tonnage, less certain deductions for space occupied by engines, crews quarters, etc., giving a rough measure of the capacity of the ship for cargo or passengers. The computation of net tonnage shall be the same as

that provided on the Certificate of Registry, in pursuance of Chapter One, Title XLVIII "Regulation of Commerce and Navigation," Revised Statutes of the United States.

40.6 Commercial Fisherman

- A. The catching of fish or shellfish by commercial fishermen constitutes the production of tangible personal property for resale within the meaning of the Rhode Island sales and use tax law. Accordingly, any tangible personal property which is consumed in the production of commercial fishing will be exempt from the sales or use tax.
- B. Examples of tangible personal property thus consumed in the process, and which may be purchased tax-free by commercial fishermen, are "twine items," a term customarily used to designate fish netting, ropes and similar items used in fish nets, trawls and traps.
- C. Inasmuch as the freezing or chilling of the catch by the commercial fisherman is a prerequisite to commencing any operation relating to the distribution of such catch and thus constitutes part of the production process, dry or natural ice consumed in such process may also be purchased without payment of the tax.
- D. When purchasing such so-called "twine items" and such ice, commercial fishermen must furnish their suppliers with a Commercial Fishermen's Exemption Certificate. The law defines "manufacturing" to mean and include production.
- E. Other taxable items are those used in administration, which means all administrative work including general office operations, accounting, collection and sales promotion. Also taxable are items used in distribution, which means all operations subsequent to the production process, such as handling, storing, selling and transporting the property produced for resale.
- F. This exemption herein referred to does not apply to items used by sports fishermen because they are not regularly engaged in commercial fishing.
- G. The following are included in the list of exempt items which are consumed in commercial fishing operations.
 - 1. Engine Parts: Filters, belts.
 - 2. Fasteners: Belts
 - 3. Fuel: Kerosene, gas, diesel oil, lube oil, grease, L.P. gas.
 - 4. Nets and Underwater Gear: Needles.

5. Tools: Shovels, ice clippers.
 6. Propulsion: Flax packing.
 7. Accessories and Miscellaneous: Bands, rubber and friction tape, distilled water, knives, picks, ice, scallop bags, forks.
 8. Parts of traps, nets, trawls, anchors, barrels, chairs, plastic floats, rings, shackles, swivels, wire cables and other similar items.
- H. The purchase of engines and capitalized property will be subject to tax when purchased for vessels less than five (5) net tons.

40.7 Commercial Fishing Vessels in Excess of Five (5) Net Tons

- A. The Rhode Island sales and use tax does not apply to the sale of and the storage, use or other consumption in this state of vessels which are in excess of five (5) net tons and which are used exclusively for commercial fishing. The exemption also applies to the nets, cables, tackle, and other fishing equipment appurtenant to or used in connection with the commercial fishing of said vessels. Property purchased for the use of such vessels and other watercraft including provisions, supplies, and material for the maintenance and/or repair of such vessels or watercraft is also exempt.
- B. In order to qualify for the exemption, the vessel and its fishing equipment as enumerated above must be used exclusively in commercial fishing as defined. Accordingly, the exemption does not apply to subsistence fishing (i.e., the taking for personal use and not for sale or barter), or sport fishing.
- C. The exemption does include United States Coast Guard (U.S.C.G.) documented passenger carrying commercial fishing vessels which meet all the following criteria:
1. A U.S.C.G. license to carry passengers for hire;
 2. U.S.C.G. vessel documentation in the coastwise fishery;
 3. U.S.C.G. vessel documentation as to proof of Rhode Island home port status or a Rhode Island boat registration to prove Rhode Island home port status;
 4. The vessel must be used as a commercial passenger carrying fishing vessel. Such vessel must be able to demonstrate that at least fifty percent (50%) of its annual gross income derives from charters or provides

documentation of a minimum of one hundred (100) charter trips annually;
and

- 5. The vessel must have a valid Rhode Island commercial fishing license.
- D. The exemption herein referred to does not apply to vessels of five (5) net tons or less.

40.8 Commercial Ships, Barges or Other Vessels of Fifty (50) Tons Burden or Over

- A. The Rhode Island sales and use tax does not apply to sales made to commercial ships, barges or other vessels of fifty (50) tons burden or over, primarily engaged in interstate or foreign commerce. The exemption applies to the repairs, alterations or conversions of such vessels; it also applies to the sale of property purchased for the use of such vessels, including provisions, supplies and material for the maintenance and/or repair of the same.
- B. Sales, as outlined above, continue to be taxable when made to ships, barges or other vessels of less than fifty (50) tons burden, whether or not primarily engaged in interstate or foreign commerce.

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