

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-H-80 (177) S
Sales Tax
September 30, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800612A

On June 12, 1980 a Petition for Advisory Opinion was received from Shearwater, 3030 Avenue #4A, Brooklyn, New York 11235.

The issue raised is whether or not Shearwater will be exempt from the sales tax upon property for the use of its vessel, MV SHEARWATER, for fuel, provisions, supplies, maintenance and repairs.

The MV SHEARWATER is enrolled and licensed by the United States Coast Guard to carry on the "Coasting Trade, Cod and Mackerel Fisheries," under Title L of the Revised Statutes of the United States, "Regulation of Vessels in Domestic Commerce."

Petitioner is contemplating engaging its motor vessel MV SHEARWATER in the business of transporting passengers, from Sheepshead Bay, Brooklyn, New York, to fishing grounds located in the waters of the State of New Jersey and beyond the limits of the New York Harbor Zone. While there, the passengers would engage in fishing, with any catch theirs to keep.

Section 1115(a)(8) of the Tax Law exempts "Commercial vessels primarily engaged in interstate or foreign commerce and property used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs (other than articles purchased for the original equipping of a new ship)."

Regulation 20 NYCRR 528.9 states in part, "Commercial Vessels...(4) Primarily means that at least seventy-five percent of the receipts from the vessel's activities are derived from interstate or foreign commerce.

(5) Engaged in interstate or foreign commerce. Engaged in interstate or foreign commerce means the transportation of persons or property for compensation between states or countries...."

To qualify as interstate or foreign commerce this department has held that a vessel must pick up property or passengers in one state or country and discharge them in another.

Since the vessel MV SHEARWATER will pick up passengers in New York State and transport them to fishing waters of the State of New Jersey and return without discharging the passengers in another state the vessel is not engaged in interstate or foreign commerce.

Accordingly, all purchases made by Shearwater will be subject to New York State and local tax.

Dated: September 2, 1980

s/GABRIEL B. DiCERBO
Deputy Director
Technical Services Bureau