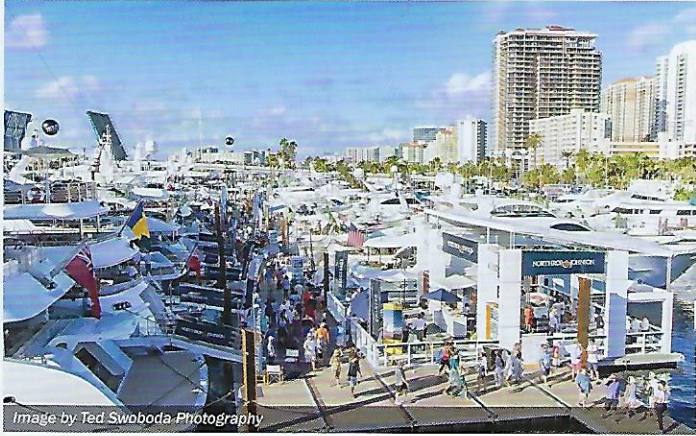


## Boat Show Bonds, State Use Tax, and the Care, Custody, and Control Exemption



Owners preparing to offer their yachts for sale at Florida's boat shows must consider issues related to U.S. customs duty and state use tax. As for customs duty, boat show bonds enable owners to offer foreign-built yachts for sale to U.S. residents without paying duty up front.

There is a catch, though: Foreign-flagged yachts entered under a boat show bond must surrender their cruising license, potentially exposing them to liability for Florida use tax. This article briefly explains the exemption from state use tax for vessels imported solely for sale – often called the “care, custody, and control” exemption – and how owners can use it, in conjunction with a boat show bond, to avoid liability for customs duty and use tax.

Foreign-flagged yachts generally avoid state use tax by entering Florida waters under a cruising license issued by U.S. Customs and Border Protection. The Florida Department of Revenue has long taken the position that foreign-flagged yachts with a valid cruising license that are used in a manner consistent with the license are exempt from state use tax.

But foreign-flagged yachts that are offered for sale under a boat show bond must surrender their cruising license, creating a potential use-tax liability.<sup>1</sup> Fortunately, there is another way for foreign-flagged yachts under a boat show bond to avoid state use tax. Vessels brought into Florida for the sole purpose of being offered for sale are exempt from state use tax provided the vessel remains under the care, custody, and control of a registered broker or dealer and the owner makes no personal use of the vessel.<sup>2</sup>

Most standard listing agreements, including the IYBA Listing Agreement for Brokerage Vessel, specifically provide that the owner retains care, custody, and control of the vessel. As a result, before an owner can take advantage of the exemption for vessels brought into Florida solely for sale, the owner and

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the broker must enter into an addendum to the listing agreement by which the owner delegates care, custody, and control of the vessel to the broker. This addendum should provide, among other things, that the owner will make no personal use of the vessel and that neither the owner nor the broker will allow anyone to use the vessel for any activity unrelated to offering the vessel for sale. If the owner nonetheless uses the vessel for an unrelated activity, the owner, not the broker, will be responsible for the resulting use tax.

The owner must immediately deliver care, custody, and control of the yacht to the broker. The owner's captain may remain on board while the addendum is in effect, but his activities must be related to offering the vessel for sale. Allowed activities include normal maintenance to keep the vessel in marketable condition. The owner should keep a detailed log of the vessel's movements and activities related to offering the vessel for sale, including showings.

Finally, the Florida Department of Revenue has indicated that the broker should obtain affidavits from the owner and his family confirming that they have made no personal use of the vessel during the term of the addendum.<sup>3</sup> If the owner complies with these terms, the yacht may remain in Florida for as long as it takes to find a buyer.

Of course, it is unnecessary to delegate care, custody, and control of a yacht that qualifies for another exemption from state use tax. For example, U.S.-documented yachts can avoid use tax if they were previously used in another state for six months under circumstances that would give rise to another state's taxing jurisdiction.<sup>4</sup> If a U.S.-documented yacht does not qualify for this exemption – because it was purchased more recently, for example, or because the owner moved the yacht frequently between states – it can still qualify for the exemption for yachts brought into Florida for sale.

<sup>1</sup> *Large Yachts Imported for Sale*, 19 C.F.R. § 4.94a(a)(5). Of course, boat show bonds are also available for U.S.-documented yachts that are otherwise dutiable. Because these yachts do not have a cruising license, they face the same use-tax issue as foreign-flagged yachts.

<sup>2</sup> Fla. Stat. § 212.06(1)(e)(3).

<sup>3</sup> *Importing Boats into Florida Solely for Sale*, TAA 03A-051 (Oct. 28, 2003).

<sup>4</sup> Fla. Stat. § 212.06(8)(a). More precisely, a rebuttable presumption arises that these yachts were not purchased for use in Florida.

