


ST 2337 - SALES TAX : SHIPS AND OTHER VESSELS FOR USE ON REGULAR AND SCHEDULED SIGHT-SEEING TOURS

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TAXATION RULING NO. ST 2337

SALES TAX : SHIPS AND OTHER VESSELS FOR USE ON REGULAR
AND SCHEDULED SIGHT-SEEING TOURS

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210978	SHIPS AND OTHER VESSELS FOR USE ON REGULAR AND SCHEDULED SIGHT-SEEING ACT; SUB-ITEM 119(1A), TOURS	SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) FIRST SCHEDULE

PREAMBLE Sub-item 119(1A) in the First Schedule to the Sales Tax
(Exemptions and Classifications) Act exempts from sales tax:-

"Ships and other vessels licensed to carry not less
than 12 adult passengers and to be used exclusively or
principally -

- (a) by the relevant owner or relevant owners;
- (b) in the course of a business carried on by the
relevant owner or relevant owners, being a
business having as its object, or as one of
its objects, the providing, for the public, of
transport of passengers for reward on
sight-seeing tours; and
- (c) for the purpose of providing, for the public,
transport of passengers for reward on regular
and scheduled sight-seeing tours"

2. The operation of sub-paragraph (c) of the item was
considered recently by the Supreme Court of New South Wales in
Mr Boat Pty Ltd v FC of T, 86 ATC 4689; 17 ATR 1127 (the Mr Boat
case).

3. The Mr Boat case concerned the classification of an
open, highly-powered, high-speed vessel 7 metres in length,
which the taxpayer intended to use in carrying on a business of
transporting paying passengers from the Manly wharf, in Sydney,
around a circuit in Manly cove and back to the wharf. It was
accepted that the craft would be licensed to carry more than 12
persons. The trip was estimated to take between five and seven
minutes. It was intended that a notice-board would be put up on
the wharf indicating that the craft would be available for the
trips and advertising the price. There would not be any
timetable of departure times. Trips would take place when there
were passengers.

4. For a vessel to satisfy sub-paragraph (c) of sub-item
119(1A) two essential tests have to be fulfilled. If either
test is not satisfied exemption does not apply.

5. The first test is whether trips offered in a vessel can be categorised as "regular and scheduled". In the Mr Boat case the Court found that, while the trips might be described as "regular" in the sense that they would take place on each day of the week, they could not be said to be "scheduled" since trips would take place as and when required. It was not necessary to go beyond the ordinary meaning of the word "scheduled" to determine the meaning of the relevant provision:

"... the expression 'regular and scheduled tours' in my view, contemplates that there will be a timetable in the sense that daily operation of the service and the times of departure of the craft are fixed in advance and can be ascertained either from enquiry or from a notice which would be called a timetable. In my view, it is not possible to stretch the words 'scheduled tours' to comprehend what is contemplated in the present case." (per Lee J, 86 ATC at 4691; 17 ATR at 1129).

6. Although the extract from the decision makes reference to daily operation of a service it is not considered that the Court was laying down a test that tours could not be regular and scheduled unless they were conducted on a daily basis. The use of the term "daily operation" in the extract merely describes a particular kind of service. It is not possible to set firm guidelines for how often tours must occur to be regular and scheduled. Much will depend on the area of sight-seeing, e.g. sight-seeing tours of popular coastal areas would be more frequent than sight-seeing tours of remote inland waterways. A scheduled fortnightly tour of an inland waterway, i.e. scheduled in the sense of times of departure fixed in advance and ascertainable from a timetable, would satisfy the first test of sub-paragraph (c).

7. The second test requires the trips to be sight-seeing tours. Ordinarily a sight-seeing tour would allow time for passengers to observe and take in various features or special interest points of the tour. There may also be stopping points to allow closer examination of points of interest, e.g. a walk on a coral reef.

8. In the Mr Boat case the Court had this to say of the tours in question:-

"... I have great difficulty in applying [the words 'sight-seeing tours'] in their natural meaning to the business activity intended to be undertaken. The very fact that the trip is so short, namely five to seven minutes, is essentially inconsistent with the general notion of a sight-seeing tour. The Item 119(1A) requires that the craft 'be used exclusively or principally' for sight-seeing and the inference is clearly open from the evidence that what is being done in the conduct of this business is to provide interested members of the public with a joy-ride, if you like, or a trip round Manly Cove in a high powered boat. The fact that there is a stop at Store Beach seems to me to do nothing to disguise the real nature of the activity which is, if I may descend to the

vernacular, 'principally or exclusively' a spin around the bay in a speedboat."

9. Because the vessel in the Mr Boat case failed to satisfy the requirements of sub-paragraph (c) it was held not to qualify for exemption under sub-item 119(1A).

10. Exemption for other vessels under sub-item 119(1A) will need to be considered in the light of their individual circumstances. The comments in this Ruling are a pointer to the manner in which the tests have to be satisfied to gain exemption.

COMMISSIONER OF TAXATION
4 June 1987