

**AYCA Educational Seminar
Newport, R.I.
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- **What is the difference between a bareboat charter and a time charter?** A bona fide bareboat charter requires the complete transfer of “possession, command, and navigation” of the vessel to the charterer. A bareboat charterer becomes, in effect, the vessel’s temporary owner and assumes responsibility for crewing and operating the vessel. If the owner retains control over the operation of the vessel, however slight, the charter could be characterized as a time charter.
- **Under what circumstances may vessels time-charter in U.S. waters?** Vessels may time-charter in U.S. waters only if they have a coastwise endorsement or transport passengers on noncoastwise voyages. Vessels without a coastwise endorsement, including foreign-flagged vessels, are not permitted to transport passengers between ports or places in U.S. waters. Thus, if a noncoastwise-qualified vessel is time-chartered, passengers may not embark and disembark at different U.S. ports. To avoid these restrictions, noncoastwise-qualified yachts generally charter in U.S. waters on a bareboat basis.
- **Which vessels are eligible for a coastwise endorsement?** Only U.S.-documented vessels are eligible for a coastwise endorsement. In addition, vessels must be American-built, though waivers are available for foreign-built vessels more than three years old, and at least 75% American-owned. In addition, an American-built, American-owned vessel of more than 200 gross tons that has previously been foreign-flagged is ineligible for a coastwise endorsement.
- **How do bareboat yacht charters work?** A bareboat yacht charter involves separate agreements with the vessel’s owner for the use of the vessel and with the crew’s employer for their services. The captain and crew must be employed by an entity distinct from the entity that owns the vessel. During the charter, the captain and crew perform crew services as independent contractors of the charterer.
- **What are the risks associated with bareboat chartering?** Bareboat chartering carries certain unavoidable risks. Most significantly, whenever a bareboat charterer retains the vessel’s usual captain and crew, there is a risk that the authorities could recharacterize the charter as a disguised time charter in violation of the coastwise laws.
- **What are the penalties for transporting passengers without a coastwise endorsement?** The penalties for transporting passengers on a noncoastwise-qualified vessel run the range from monetary fines up to forfeiture of the vessel. At the low end, the penalty for transporting passengers in violation of the coastwise laws is \$762 per passenger. The penalty for operating a vessel without the proper endorsement is up to \$15,000 per day. Finally, a knowing violation can result in forfeiture of the vessel; however, we are not aware of any case in which a vessel has been seized and forfeited as a result of transporting passengers in violation of the coastwise laws.

- **What is state sales tax and at what rate is it charged?** State sales taxes are consumption taxes on receipts from sales and leases of tangible personal property, including vessels. Rates vary from state to state. In Massachusetts, for example, sales tax is 6.25%. New York charges sales and use tax at a statewide rate of 4%, plus a local rate of up to 4.875%. Rhode Island charges no sales tax on vessels.
- **How is sales tax calculated on vessel charters?** In many states, including Florida and New York, time charters are considered nontaxable services. By contrast, bareboat charters are considered leases of tangible personal property and are therefore subject to sales tax. Sales tax is generally due only on the portion of the charter fee allocable to the bareboat charter, excluding any vessel-services fee. Industry custom and practice follow the so-called 80/20 rule, which allocates 80% of the charter fee to the bareboat charter. State revenue authorities may question the allocation of the charter fee if they think it belies commercial reality.
- **Where is sales tax collected if a charter includes two or more states?** Sales tax is generally collected in the state where the charter begins, that is, where the owner makes the vessel available to the charterer. In theory other states may collect sales tax on portions of the charter that occur within their jurisdiction, though in practice they rarely do.
- **Who collects state sales tax? To whom is it paid?** In most states, the seller/lessor is responsible for collecting sales tax from the buyer/lessee. Sales tax is generally paid to the state department of revenue. The owner may also be required to register with state authorities for sales-tax purposes.

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