

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

IRA CITRON

DECISION

for Revision of a Determination or for Refund
of Sales and Use Taxes under Articles 28 and
29 of the Tax Law for the Period Ended
August 31, 1980.

Petitioner, Ira Citron, 7031 108th Street, Forest Hills, New York 11375,
filed a petition for revision of a determination or for refund of sales and use
taxes under Articles 28 and 29 of the Tax Law for the period ended August 31,
1980 (File No. 40268).

On June 24, 1985, petitioner filed a waiver of hearing and requested that
this matter be decided by the State Tax Commission on the basis of the entire
file plus additional documents submitted to the Commission on June 18, 1985.
After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether the amount of use tax asserted against the petitioner by the Audit
Division upon the use of a racehorse in New York State was correct.

FINDINGS OF FACT

1. On November 19, 1982, the Audit Division issued a Notice of Determination
and Demand for Payment of Sales and Use Taxes Due against the petitioner, Ira
Citron, for taxes due of \$8,240.00, plus penalty of \$2,060.00 and interest of
\$2,319.81, for a total amount due of \$12,619.81 for the period ended August 31,
1980.

2. The Audit Division's basis for issuing the notice against petitioner
was that he raced a standardbred racehorse, "Fella Blue Chip", at Yonkers

Raceway in Yonkers, New York on July 5, 1980. The petitioner did not file a Report of Casual Sale as required under section 1133 of the Tax Law and, further, did not respond to correspondence from the Audit Division regarding his purchase and use of the racehorse. Therefore, the Audit Division estimated the purchase price of the racehorse to be \$103,000.00 based upon his age (2 years) and sire ("Most Happy Fella").

3. At a pre-hearing conference with the Audit Division, the petitioner presented evidence that the actual purchase price of the racehorse was \$67,000.00, and the amount of tax due was accordingly reduced to \$5,360.00.

4. On November 1, 1979 at the Hanover Sale at Harrisburg, Pennsylvania, the petitioner and at least one other individual, Murray Forman, purchased "Fella Blue Chip" for \$67,000.00. The petitioner and Mr. Forman each purchased a 15 percent interest in the racehorse. Presumably the other individuals owned the remaining seventy percent interest.

The evidence in petitioner's file indicates that "Fella Blue Chip" first raced in New York State on July 5, 1980 at Yonkers Raceway. In 1981, he raced again at Yonkers Raceway and also at Roosevelt Raceway in Nassau County, New York. He raced once in 1982, on January 15, at Freehold Raceway, Freehold, New Jersey and was then sold on September 24, 1982 at the Old Glory Horse Sale at Yonkers Raceway for \$3,600.00.

5. Petitioner offered contradictory evidence regarding the racehorse's earnings. In his perfected petition, petitioner indicated that the lifetime earnings for the racehorse were only \$6,000.00. However, on June 18, 1985, the petitioner advised the State Tax Commission that in 1981 the horse had earned \$9,813.50.

6. On May 15, 1981, the Audit Division sent to petitioner a Report of Casual Sale regarding the purchase and use of "Fella Blue Chip". Petitioner did not return the report or offer any explanation to the Audit Division.

7. Petitioner contends that at the time "Fella Blue Chip" first raced in New York State, the racehorse had an appraised value of between \$5,000.00 and \$6,000.00 "because of physical handicap". Petitioner offered no documentary or other substantial evidence to support his contention.

8. No evidence being presented to the contrary, it is presumed that at the time of purchase of "Fella Blue Chip", the petitioner was a resident of New York State.

CONCLUSIONS OF LAW

A. That section 1110(A) of the Tax Law imposes a compensating use tax for the use within this state of any tangible personal property purchased at retail and that "use" is defined by section 1101(b)(7) as the exercise of any right or power over tangible personal property by the purchaser thereof.

B. That petitioner's racing of "Fella Blue Chip" within this state constituted a taxable use within the meaning of section 1101(b)(7). Jacobs v. Joseph, 282 A.D. 622, 126 N.Y.S.2d 274 (1st Dept. 1953). However, inasmuch as petitioner purchased a 15 percent interest in the racehorse, his compensating use tax liability is hereby reduced to \$804.00 (\$67,000.00 x 15 percent x 8 percent sales tax rate). Petitioner has failed to sustain the burden of proof required to show that the value of the racehorse was less than this amount at the time of first use in this State.

C. That the petition of Ira Citron is granted to the extent indicated in Conclusion of Law "B", supra; the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes

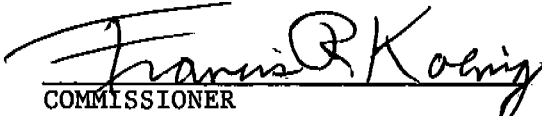
Due issued November 19, 1982; and that except as so granted, the petition is denied.


DATED: Albany, New York

OCT 30 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER