

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	DECISION
	:	
RAY BARRETT	:	
ARRETT COMPANY, INC.	:	
	:	
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 5/31/81.	:	

Petitioner, Ray Barrett, Arrett Company, Inc., 119 Ralsey Road, Stamford, Connecticut 06902, 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 May 31, 1981 (File No. 40970).

A hearing was held before Sandra F. Heck, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 26, 1986 at 2:45 p.m. Petitioner appeared by Mark F. Greene, P.C. (Jacob Wiesan). The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUES

I. Whether a boat purchased by petitioner was delivered outside New York State and therefore not subject to sales tax.

II. Whether sales and use tax on the purchase of a boat was legally due and paid to the State of Connecticut without right to refund, thereby invoking the reciprocal provisions of section 1118(7)(a) of the Tax Law.

FINDINGS OF FACT

1. On August 25, 1982, the Audit Division issued to petitioner, Ray Barrett, Arrett Company, Inc., a Notice of Determination and Demand for

Payment of Sales and Use Taxes Due, assessing sales and use taxes under Articles 28 and 29 of the Tax Law for the period ending May 31, 1981 in the amount of \$5,696.67, together with penalties in the amount of \$911.47 and interest in the amount of \$740.57, for a total of \$7,348.71.

2. Petitioner, Ray Barrett, is the president of Arrett Company, Inc., a Delaware corporation formed for the purpose of owning and documenting the boat at issue herein. Mr. Barrett has been a resident of the State of Connecticut since October, 1971.

3. As evidenced by the bill of sale dated March 28, 1981, petitioner purchased a 1981, thirty-three foot Carver boat named "Station Break", Hull No. CDR 390460281-81, from Surfside 3 Marina Inc. (hereinafter "Surfside") in Lindenhurst, New York. The boat was documented by the United States Coast Guard, official no. 639982, on December 11, 1981 by petitioner.

4. Prior to the petitioner taking possession of the boat, Surfside prepared the boat for delivery. This preparation, or "make ready time" involves assembly of the boat, installation of the engines and preparation of the engines for operation. Following the "make ready time", the boat is taken out for 15 to 30 minutes to ensure that it is running properly. Petitioner specified that the boat be delivered to him in Connecticut to insure that the boat was operating properly and had 5 hours of running time to detect any problems.

5. Petitioner was informed, during the negotiations over the purchase price of the boat, that Surfside did not provide delivery service to Connecticut. Petitioner then contracted with a Mr. William F. Miller of

Bayside, New York, to motor the boat from New York to Connecticut and to deliver the boat to petitioner in Stamford, Connecticut.

6. On May 14, 1981, Mr. Miller delivered the boat to petitioner in Stamford, Connecticut. The keys had previously been given to petitioner at Surfside in New York. The balance of the purchase price was not paid by petitioner until the boat was delivered in good working order in Connecticut.

7. On May 24, 1983, petitioner registered the boat with the State of Connecticut and paid \$6,075.00 of sales and use tax to Connecticut.

CONCLUSIONS OF LAW

A. That section 525.2(a)(3) of 20 NYCRR provides, in pertinent part, as follows:

"The sales tax is a 'destination tax', that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate."

B. That possession of the boat was transferred by the vendor to the purchaser's designee in New York State. The fact that petitioner's acceptance of the boat was conditioned on the completion of a successful shakedown cruise from New York to Connecticut is not determinative for the purposes of sales tax liability. Section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property, except as otherwise provided in Article 28. The term sale is defined by section 1101(b)(5) of the Tax Law as "[a]ny transfer of title or possession or both..., conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor...,". The statute specifically provides that a sale occurs when either title or possession is transferred. In a conditional sale transaction, the sale, for tax purposes, occurs upon delivery not upon final payment or completion of

contract (see Matter of N.Y. World Telegram Corp., v. McGoldrick, 298 N.Y. 11 [1948]; Matter of Jacques Francais Rare Violins, Inc., State Tax Commission, October 5, 1984; 20 NYCRR 525.2[a][2]). Therefore, for the purpose of determining sales tax liability, petitioner's boat was delivered in New York State and is subject to sales tax under Articles 28 and 29 of the Tax Law, unless otherwise exempted.

C. That section 1118(7)(a) of the Tax Law provides an exemption from compensating use tax liability in respect to use of property on which sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state which other state allows a corresponding exemption for sales and use tax paid to New York State. Because the issue in this case involves the imposition of sales tax, rather than compensating use tax, the reciprocity provision of section 1118(7)(a) of the Tax Law is inapplicable.

D. That section 1145 of the Tax Law provides for the imposition of penalties for failure to file a return or to pay over any tax required by Article 28 of the Tax Law. If, however, the Tax Commission determines that such failure was due to reasonable cause and not due to willful neglect, it may remit all such penalty. Petitioner's failure to pay sales tax was due to reasonable cause and not willful neglect, in that failure to pay was due to good faith belief that delivery of the boat had been effected in the State of Connecticut, as evidenced by the payment of sales and use tax to that jurisdiction.


E. That the petition of Ray Barrett and Arrett Company, Inc. is granted to the extent indicated in Conclusion of Law "D"; the Audit Division

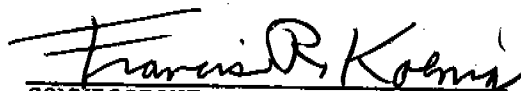
is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 25, 1982; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986


PRESIDENT


COMMISSIONER


COMMISSIONER