

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JAMCO INVESTMENTS, 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 Ending August 31,
1980.

DECISION

Petitioner, Jamco Investments, Inc., c/o Frederick T. Modell, President, 190 East 72nd Street, New York, New York 10021, 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 ending August 31, 1980 (File No. 41016).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 20, 1985 at 10:45 A.M. Petitioner appeared by Dreyer and Traub (Howard E. Cotton, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, 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 petitioner was a resident or nonresident of New York State at the time said boat was purchased.

III. Whether petitioner, if deemed to be a resident of New York at the time of purchase, used said boat within New York and is therefore subject to a compensating use tax.

FINDINGS OF FACT

1. Petitioner, Jamco Investments, Inc. (hereinafter "Jamco"), was incorporated in the State of Delaware on October 9, 1979. Frederick T. Modell and Vickie H. Modell, husband and wife, were President and Secretary-Treasurer of Jamco, respectively. Mr. and Mrs. Modell were the only stockholders of Jamco. Jamco was formed for the sole purpose of purchasing and maintaining a boat and said boat was the only asset owned by petitioner.

2. On December 12, 1979, Jamco purchased a boat from Willis Marine Center, Inc. (hereinafter "Willis") located in Huntington, New York. Said boat, called the "Jam", was a 31-foot sloop equipped with a fiberglass hull and a 16-horsepower motor. No sales tax was paid on the \$48,417.00 purchase price of the vessel.

3. On March 7, 1983, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due to petitioner for taxes due of \$8,350.00, plus penalty of \$2,087.00 and interest of \$2,682.00, for a total sum of \$13,119.00. The Notice was issued for tax due on the vessel "Jam" and was assessed "Based on information submitted in previous correspondence...". No "previous correspondence" was submitted in evidence by the Audit Division. The tax due assessed in the Notice was computed using an estimated purchase price; however, at the hearing held herein the Audit Division conceded that the proper purchase price of "Jam" was \$48,417.00, that the proper tax due is \$3,389.19 and that penalty is cancelled and only minimum interest due.

4. Although "Jam" was purchased on December 12, 1979, petitioner did not take actual delivery of the vessel until April of 1980. Sometime in April of 1980, an agent, paid by Willis, navigated the vessel from Willis' facilities

in Huntington, New York to a marina located in Stamford, Connecticut. Petitioner took delivery of "Jam" at said marina in Stamford, Connecticut.

5. "Jam" was at all times moored either in Stamford, Connecticut (during the summer months) or in Florida (during the winter months). The vessel was never moored by petitioner in New York and the only time "Jam" entered New York was for an approximate two week period when it returned to Willis' facility for emergency repairs. Said repairs were made under a warranty issued by the seller.

6. "Jam" was licensed, registered and/or enrolled with the Department of Transportation, U.S. Coast Guard, by Jamco Investments, Inc. and not by Frederick T. Modell, individually. Jamco maintained its own checking account and filed annual franchise tax reports with the State of Delaware for the years 1979 through 1984. Mr. Modell elected to purchase "Jam" through a corporation rather than individually so that he could limit personal liability.

7. In his capacity as President of Jamco, Mr. Modell (i) negotiated the purchase of "Jam"; (ii) arranged for the financing of the vessel; and (iii) obtained all necessary insurance for the vessel. Jamco purchased the vessel in question with the proceeds of a loan obtained from the Melville, New York branch office of Chemical Bank. The vessel was also insured with a broker located in Huntington, New York. Mr. and Mrs. Modell maintained their principal residence in New York City and Mr. Modell also owns and operates a successful wholesale jewelry business located in New York City.

CONCLUSIONS OF LAW

A. That 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 [20 NYCRR

525.2(a)(3)]. In the instant matter, the seller of the vessel transferred possession to petitioner outside New York State. Accordingly, the transaction was not subject to the tax imposed under section 1105(a) of the Tax Law.

B. That section 1110 of the Tax Law imposes a compensating use tax on every person "...for the use within this state...of any tangible personal property purchased at retail...". Section 1101(b)(7) of the Tax Law defines the term "use" as the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to the receiving, storage or any keeping or retention for any length of time.

C. That the vessel "Jam" was at all times moored by petitioner either in Connecticut or in Florida. The temporary mooring of "Jam" at Willis' facilities in New York State for emergency repairs did not create a "use" within New York State as defined in section 1101(b)(7) of the Tax Law. Accordingly, no compensating use tax is due on "Jam" since there has been no "use" within the State.

D. That the issue of petitioner's status as a resident or nonresident is rendered moot since the vessel has not yet been "used" within the State.


E. That the petition of Jamco Investments, Inc. is granted and the Notice and Demand for Payment of Sales and Use Taxes Due dated March 7, 1983 is cancelled.

DATED: Albany, New York

JAN 17 1986

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER