

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
RON-JILL CORP.	:	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 March 1, 1979	:	
through May 31, 1979.	:	

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Petitioner, Ron-Jill Corp., c/o Ronald A. Ragovin, 145 East 27th Street, New York, New York 10016, 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 March 1, 1979 through May 31, 1979 (File No. 42130).

A small claims hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 30, 1984 at 9:15 A.M. Petitioner appeared by Ronald A. Ragovin, President. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly assessed compensating use tax on petitioner's use within this state of a vessel purchased without the state.

II. Whether the Audit Division properly assessed against petitioner penalties pursuant to Tax Law section 1145(a)(1)(i).

FINDINGS OF FACT

1. On November 15, 1982, the Audit Division issued to petitioner, Ron-Jill Corp., c/o Ronald Allen Ragovin, President, 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 March 1, 1979 through May 31, 1979 in the estimated amount of \$6,742.00, plus penalty and interest. The assessment represented compensating use tax allegedly due on petitioner's use within this state of a vessel, Samantha IV, purchased without the state. At a pre-hearing conference, petitioner produced the invoice for the purchase of the vessel which reflected the price, after allowance for a used boat trade-in, as \$25,500.00; the assessment was accordingly reduced to \$1,785.00, plus penalty and interest.

2. The petition and perfected petition filed by Ron-Jill Corp. and the answer submitted by the Audit Division mistakenly refer to the period at issue as 1978. The vessel was used by the corporate officers in April, 1979 and for some time thereafter (infra); the period at issue is thus correctly stated in the assessment.

3. Ron-Jill Corp. was incorporated under the laws of Delaware for the purpose of acquiring and leasing the Samantha IV. The sole officers and shareholders are Ronald A. Ragovin and his wife, who are residents of New York.

4. Petitioner purchased the Samantha IV, a 33-foot yacht, on July 13, 1978 and according to the boat invoice and order form, took delivery at Stone Harbor Marina in Cape May, New Jersey. The yacht was subsequently transported to Norwalk Cove Marina situated in South Norwalk, Connecticut and remained berthed there until April, 1979. During the period July, 1978 to April, 1979, Mr. Ragovin apparently endeavored to lease the Samantha IV but was unsuccessful.

5. In April, 1979, the Samantha IV was transported from Norwalk to the Hudson Point Yacht Club in Freeport, New York in order to facilitate Mr. Ragovin's efforts to lease the vessel. He placed advertisements in newspapers, spoke to various yacht brokers and eventually, on March 1, 1980, leased the Samantha IV

to Mr. Sol Rubin for a term of three years. From April, 1979 to the time the lease was executed, Mr. Ragovin occasionally used the yacht for pleasure cruising. Monthly rental payments under the lease were \$428.06 (paid directly to First Pennsylvania Bank, N.A., the holder of the mortgage on the vessel); Mr. Rubin was also obligated to pay \$1,500.00 during the first year of the lease, \$2,500.00 during the second year and \$3,000.00 during the third year, with the total sum of \$7,000.00 to be applied upon the termination of the lease toward Mr. Rubin's purchase of the vessel. Mr. Rubin's lease was terminated for default in payment. In May, 1982, petitioner leased the yacht to Alex and Edwina Gardega who have continued to lease it until the present. Monthly payments total \$463.37: \$28.06 is paid directly to First Pennsylvania Bank, N.A. and the remainder to petitioner.

6. Petitioner offered in evidence the United States Coast Guard Certificate of Documentation for the Samantha IV, which certificate was issued to petitioner on November 27, 1982 and reflects that the vessel was documented for pleasure use.

#### CONCLUSIONS OF LAW

A. That at the time of the purchase and delivery of the Samantha IV, petitioner, a Delaware corporation, engaged in no business activities within this state, e.g., endeavoring to lease a mooring, and could not be considered a New York resident liable for sales and use taxes under Articles 28 and 29 of the Tax Law (Tax Law section 1118[2] and 20 NYCRR 526.15[b]). The purchase would, in any event, be exempt from the imposition of tax, as the stated purpose of the purchase was to lease the Samantha IV to third parties. In April, 1979, however, by transporting the Samantha IV into this state and

engaging in activities aimed at leasing the vessel, petitioner became a New York resident.

B. That during the period April 1, 1979 through February 28, 1980, petitioner permitted the corporate officers use of the vessel, presumably as compensation for services rendered. Accordingly, the transaction was one upon which the corporation should have collected sales tax, computing the tax upon the fair rental value of the vessel, \$463.37 per month. (See definitions of "sale" and "consideration", 20 NYCRR 526.7[a] and [b]. Cf. 20 NYCRR 531.4[c][2] which allows a user to pay the compensating use tax on the fair rental value of property brought into this state for use in the performance of a contract but used by the contractor for a period of less than six months.)

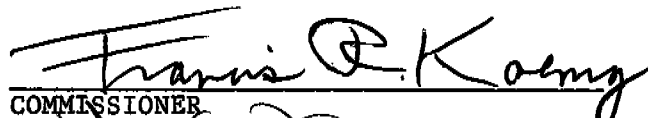
C. That the petition of Ron-Jill Corp. is granted to the extent indicated in Conclusion "B"; the assessment issued on November 15, 1982 is to be modified accordingly; and except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

APR 04 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER