

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
OLLAG CHARTERS, INC.	:	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	:	
November 30, 1979.	:	

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Petitioner, Ollag Charters, Inc., c/o Dominick Gallo, 144 Cedar Street, Valley Stream, New York 11580, 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 November 30, 1979 (File No. 42508).

On April 17, 1986, petitioner, by its representative, Robert Becht, Esq., waived a hearing before the State Tax Commission and requested the Commission to render its decision, based on the existing file plus additional documentary evidence and briefs to be submitted by May 19, 1986. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether tax due on a purchase of a boat occurring on or about August 4, 1978 was properly included on a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period ended November 30, 1979.

FINDINGS OF FACT

1. Petitioner, Ollag Charters, Inc.<sup>1</sup>, was incorporated in the State of Delaware prior to the purchase of the vessel, Salley G. III. Dominick Gallo was president of Ollag Charters, Inc. Petitioner's business address is in care of Mr. Gallo, 144 Cedar Street, Valley Stream, New York. There is no evidence that petitioner's incorporation was for any other purpose than to purchase the vessel, Salley G. III. The subsequent sale of the Salley G. III apparently resulted in the termination of the petitioner corporation.

2. The vessel, Salley G. III, a 1978 42-foot Sedan/Cruiser, Hull Number 42-127, was purchased from Anchorage Boat Sales, Inc., Lindenhurst, New York, as consignee of Post Marina Co., Inc., May Landing, New Jersey on or about August 4, 1978.

3. No sales tax was paid and no sales tax return was filed on the purchase of the Salley G. III.

4. In October 1981, the Audit Division observed petitioner's boat in a New York marina. On November 29, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period ended November 30, 1979 in the amount of \$7,350.00, plus interest of \$2,759.00 and penalty of \$1,837.00, for a total of \$11,946.00.

5. Petitioner did not present any evidence that the purchase of the Salley G. III took place outside of New York. Information in the record indicates that petitioner took possession of the Salley G. III at Lindenhurst, New York. The vessel was then moored in Freeport, New York until the spring of

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1 The Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated November 29, 1982, incorrectly referred to petitioner as Olleg Charters, Inc.

1979, when it was brought to Florida. The vessel returned to Montauk, New York in 1980 and remained there until petitioner sold it.

6. Petitioner contends that the sales tax was remitted by the seller, Anchorage Boat Sales, Inc. Petitioner, however, failed to introduce any evidence indicating that it had paid the sales tax or that the seller had remitted any tax on the sale to the Department of Taxation and Finance.

#### CONCLUSIONS OF LAW

A. That petitioner purchased tangible personal property, namely a boat, subject to the sales tax imposed by section 1105(a) of the Tax Law, on or about August 4, 1978.

B. That petitioner failed to sustain its burden of proof that the purchase of the Salley G. III took place outside New York (see Findings of Fact "2" and "5"). Therefore, the transaction was subject to the tax imposed under section 1105(a) of the Tax Law.

C. That inasmuch as the purchase of the Salley G. III occurred on or about August 4, 1978, it would properly be included in the sales tax reporting period ended August 31, 1978 and not the period ended November 30, 1979. The tax due on said sale was, therefore, improperly included on the notice of determination issued November 29, 1982.

D. That section 1147(b) of the Tax Law provides, in part, that:

"No assessment of additional tax shall be made after the expiration of more than three years from the date of filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time."

Petitioner failed to file a sales tax return. Therefore, the Audit Division may assess the tax at any time and issue a new notice of determination and demand covering the period June 1 through August 31, 1978.


E. That the petition of Ollag Charters, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 29, 1982 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT

  
COMMISSIONER

  
COMMISSIONER