

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BONNIE CASTLE YACHT BASIN, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Sales and Use Taxes under Articles	:	
28 & 29 of the Tax Law for the Period June 1,	:	
1979 through August 31, 1982.	:	

Petitioner, Bonnie Castle Yacht Basin, Inc., Holland Street, Box 206, Alexandria Bay, New York 13607, filed a petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1979 through August 31, 1982 (File No. 43969).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York on December 5, 1985. Petitioner appeared by Hancock & Estabrook (E. Parker Brown, II, Esq., of counsel). The Audit Division appeared by John P. Dugan (James Della Porta, Esq., of counsel).

ISSUE

Whether petitioner made delivery of marine vessels outside of New York State and, if not, whether petitioner was a vendor required to collect sales tax on sales of certain marine vessels wherein it acted as a broker.

FINDINGS OF FACT

1. On February 18, 1983, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner Bonnie Castle Yacht Basin, Inc. ("Bonnie Castle") assessing a deficiency of sales and use tax for the period June 1, 1979 through

August 31, 1982 in the amount of \$451,743.81 plus interest of \$111,217.19 for a total amount due of \$562,961.00.

2. The issuance of the Notice of Determination and Demand for Payment of Sales and Use Tax Due was premised upon the Audit Division's conclusion that sales tax was due upon Bonnie Castle's sale of thirty-nine boats. On the basis of information produced at the pre-hearing conference, the Audit Division has acknowledged that sales tax was not due on the sale of twenty of the thirty-nine boats. Thereafter, Bonnie Castle provided additional information to representatives of the Audit Division resulting in the conclusion by the Audit Division that sales tax was not due on the sale of an additional eleven boats.

3. Bonnie Castle is a marine facility which sells boats and acts as a broker for marine vessels. It has approximately 180 slips for both large and small vessels and also has boat repair facilities, a motel and restaurants.

4. Generally, if an offer is made to Bonnie Castle to purchase a vessel, the offer will be subject to a sea trial. During the sea trial an employee of Bonnie Castle would take the prospective purchaser for a boat ride. However, a prospective purchaser would not be allowed to take control of the wheel of the boat during the sea trial.

5. If requested by a prospective purchaser, petitioner would make delivery to a government owned wharf in Rockport, Ontario, Canada. When this occurred possession of the boat and keys would not be transferred to the prospective purchaser until the boat arrived at Rockport. A prospective purchaser would not be allowed to decide the route of the boat when delivery was made in Rockport.

6. Bonnie Castle's location in Alexandria Bay, New York is approximately four miles from Rockport.

7. On some brokerage transactions, Bonnie Castle would receive the full purchase price, retain a percentage of this amount as its commission and remit the balance to the seller.

8. The remaining eight vessels in dispute and the facts concerning these sales are as follows:

- a. On August 4, 1979 Bonnie Castle sold a used 22 foot Grady-White boat to a customer who had an address in Ontario, Canada. The boat was paid for in Canadian dollars and Canadian duty was paid on the vessel. The boat was delivered to the purchaser at the government owned wharf in Rockport, Ontario.
- b. On March 24, 1980 Bonnie Castle, as broker, completed a sale of a 47 foot Concord marine vessel. The seller was Mel Glenn who was a Canadian national. The purchase was consummated by Jerome Fried who made the purchase on behalf of Sterling Enterprises of Wilmington, Delaware. The boat, which had a Canadian registration, was delivered to Mr. Fried in Rockport, Ontario. The boat was also Canadian duty paid.
- c. On September 8, 1979 Bonnie Castle, as broker completed the sale of a twenty-five foot Trojan Express Cruiser marine vessel. The seller of the boat was Upstate Tire, Incorporated of Watertown, New York and the purchaser was Mr. Jean Claude Girouard who resided in Canada. Both the sales order and the Certification of Out-of-State Delivery indicated that delivery took place in Alexandria Bay, New York. However, each of these documents were erroneously prepared and, in fact, delivery took place in Rockport, Ontario in accordance with Bonnie Castle's usual procedure when the purchaser was a Canadian national.
- d. On August 27, 1979, Bonnie Castle, as broker, sold a forty-three foot Gulf Star marine vessel. The seller of the boat was Grand Mere Goose, Inc., a Delaware corporation. The purchaser of the boat was Mr. David W. Turney who resided in Beaconsfield, Quebec, Canada. Bonnie Castle's sales order form stated that delivery would be made at Bonnie Castle in Alexandria Bay, New York. The New York State Certification of Out-of-State Delivery stated in one place that delivery was to be made at Bonnie Castle. In another place the Certification of Out-of-State Delivery stated that delivery was to be made in Canada. In fact, delivery was made by a Bonnie Castle employee by piloting the boat to Rockport, Ontario where possession was transferred.

- e. On September 18, 1980 petitioner sold a 1980 thirty-six foot Trojan marine vessel to a Mr. Dagenais who was of Canadian nationality. Delivery of the boat was made in Rockport, Ontario by transfer of the keys and possession of the craft. Thereafter, Mr. Dagenais paid Canadian duty.
- f. On June 27, 1981 petitioner sold a twenty foot Elite Craft Riviera marine vessel to a Mr. Mahoney who resided in Ontario, Canada. Delivery was made after piloting the boat to Rockport, Ontario. Thereafter, the keys and possession of the boat were turned over to Mr. Mahoney. Canadian duty was paid on the boat.
- g. On August 10, 1979 Bonnie Castle sold a seventeen foot Christ Craft Super Sport Boat to a Mr. A.C. Leveille who resided in Quebec, Canada. The boat was delivered by being piloted to Rockport, Ontario, Canada where the keys and possession of the boat were conveyed to Mr. Leveille.
- h. On July 6, 1980 petitioner sold, as a broker, a 22 foot Sea Ray marine vessel to a Mr. David King of Ontario, Canada. The seller was a resident of Pennsylvania. The boat was delivered by being piloted to Rockport, Ontario, Canada where the keys and possession of the boat were conveyed to Mr. King.

CONCLUSIONS OF LAW

A. That the sales tax is a "transactions tax" and a "destination tax" (20 NYCRR 525.2[a][2] and [a][3]). That is, "...the taxed transaction is an act resulting in the receipt of consideration for the transfer of title, or possession or both to property..." (20 NYCRR 525.2[a][2]). Further, "...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]).

B. That on the basis of Finding of Fact "8", it is concluded that delivery of each of the vessels in issue took place in Canada. Accordingly, petitioner was not required to collect sales tax on the transactions in issue.

C. That in view of the foregoing, it is unnecessary to determine whether petitioner was a vendor required to collect sales tax on sales of certain marine vessels wherein it acted as a broker.

D. That the petition of Bonnie Castle Yacht Basin, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated February 18, 1983, is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 12 1986


PRESIDENT


COMMISSIONER


COMMISSIONER