

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ALFRED J. FASOLINO	:	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 February 28,	:	
1979.	:	

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Petitioner, Alfred J. Fasolino, 109 Danbury Road, Suite 3, P.O. Box 329, Ridgefield, Connecticut 06877, 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 February 28, 1979 (File No. 47330).

A hearing was held before Sandra Heck, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 14, 1986 at 9:50 A.M., with all briefs to be submitted by August 8, 1986. Petitioner appeared by Rosenbloom and Hofflich (Jerald Rosenbloom, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

#### ISSUE

Whether the Audit Division properly determined that a boat purchased by petitioner, as an agent for a corporation, was subject to compensating use tax.

#### FINDINGS OF FACT

1. On August 22, 1983, the Audit Division issued against petitioner, Alfred Fasolino, and Calm Seas Ltd. a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing sales and use taxes in the amount of \$4,564.00 plus penalty and interest for the period ended February 28, 1979.

The assessment represented compensating use tax allegedly due on the use within the state of a vessel, The Last Frontier, purchased outside the state.

2. Calm Seas Ltd. did not protest the assessment.

3. Calm Seas Ltd., a Delaware corporation, purchased a 37 foot yacht from Willis Marine Center, Inc. ("Willis") of Huntington, New York for a purchase price of \$65,200.00. The Bill of Sale and Agreement between the parties was signed by Alfred J. Fasolino, acting for Calm Seas Ltd.

4. Sometime in April 1980, Willis delivered The Last Frontier to Calm Seas Ltd. in Stamford, Connecticut, where Mr. Fasolino, acting for the corporation, took possession of the vessel.

5. From January 20, 1979, when the purchase agreement was signed, until possession was transferred in Connecticut, The Last Frontier was located at Willis's place of business where it underwent certain work agreed to by the parties as a condition of sale.

6. The Last Frontier was moored in Old Greenwich, Connecticut in the calendar year 1979. It is not known where it was moored or used thereafter.

7. Mr. Fasolino was a resident of Connecticut. He was not an officer or stockholder of Calm Seas Ltd. Information supplied to the Audit Division by Willis showed a New York State address for Mr. Fasolino.

#### CONCLUSIONS OF LAW

A. 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."

B. That Tax Law section 1101(b)(7) defines the term "use" as the exercise of any right or power over tangible personal property by the purchaser of that property

and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time.

C. That there is no indication that The Last Frontier was ever present in New York State after the seller transferred possession to petitioner in Connecticut. Since there has been no use within this State, no compensating use tax may be imposed. Whether or not petitioner was a resident or did business in New York State is irrelevant, inasmuch as the vessel was not used within the State.

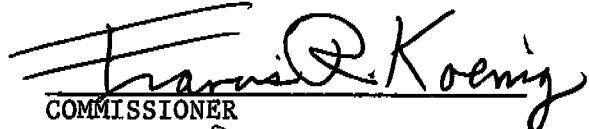
D. That the petition of Alfred Fasolino is granted, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against him and dated August 22, 1983 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT

  
COMMISSIONER

  
COMMISSIONER