

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

CAPTREE VENTURES, INC.  
AND RAYMOND W. GIMMLER

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 Ending August 31,  
1980.

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Petitioners, Captree Ventures, Inc. and Raymond W. Gimmler, 9 Seawane Road, East Rockaway, New York 11518, 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. 47453).

A formal hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on March 11, 1985 at 9:15 A.M. Petitioner Raymond W. Gimmler appeared pro se and as president of Captree Ventures, Inc. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether petitioners, Captree Ventures, Inc. and Raymond W. Gimmler, are liable for tax on the purchase of a vessel.

II. If so, whether petitioners are liable for interest on the amount of tax due from the due date to the date payment is made.

FINDINGS OF FACT

1. On July 29, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the petitioners, Captree Ventures, Inc. ("the corporation") and Raymond W. Gimmler, for taxes

due of \$2,450.00, plus interest of \$813.47, for a total amount due of \$3,263.47 for the period ending August 31, 1980.

The tax due was based on the purchase by petitioners of a 1969 42-foot vessel identified as "The Wake Maker" for \$35,000.00.

2. On October 18, 1983, petitioners timely filed a petition for a hearing to review the notice of determination.

3. In or about August of 1980, petitioner Gimmler, a resident of New York State, arranged the purchase of "The Wake Maker" from a certified broker at the Toms River Boatyard in Toms River, New Jersey. Petitioner Gimmler was advised by an official of the Bank of North America, from whom he was negotiating a \$25,000.00 mortgage for the vessel, that by continuing the documentation that was presently on the vessel and forming a Delaware corporation, that New York sales tax could be avoided.

Petitioner Gimmler was referred to Ship or Sail Brokerage Co., Inc. which arranged the formation of Captree Ventures, Inc., a Delaware corporation, for the purpose of purchasing and owning the vessel. Petitioner Gimmler was the president and sole stockholder of Captree Ventures, Inc. Ship or Sail Brokerage Co., Inc. charged petitioner Gimmler \$545.00 for these services.

4. It is not known whether petitioner Gimmler or the corporation purchased the vessel, but on August 18, 1980, the vessel was purchased and immediately transferred from its New Jersey location into New York State by petitioner Gimmler.

5. Petitioner Gimmler, a registered New York State Lobbyist and Public Relations Consultant for the Uniformed Fire Officers Association, used the vessel for business and pleasure. The vessel remained in New York State for the remainder of 1980. For the entire year 1981, the vessel was used

exclusively in Connecticut. In 1982, the vessel was returned to New York State at Sag Harbor and was used in and around New York State until June, 1984 when it was sold and the mortgage paid. Captree Ventures, Inc. was dissolved on July 26, 1984.

6. At the time of purchase of the vessel, the corporation maintained a nexus in New York State. In petitioner Gimmler's words, "(the corporation) is me in New York." Petitioner Gimmler testified that the corporation had a Delaware address; however, he did not know what was located at that address. Neither petitioner has alleged nor established the conduct of business exclusively outside New York State by petitioner Captree Ventures, Inc.

7. Petitioner Gimmler was first made aware of a possible tax liability on the purchase of the vessel in a letter from the Audit Division on July 19, 1983. He contends that he should not be held liable for interest on the tax due prior to said date. Petitioner Gimmler also claims that he was advised by a representative of the Audit Division that interest would cease to accumulate if he filed a petition for a hearing.

#### CONCLUSIONS OF LAW

A. That section 1110 of the Tax Law provides, in pertinent part, for the imposition of a use tax for the use within this state of any tangible personal property (Tax Law §1110[A]).

B. That 20 NYCRR 526.15 defines "resident" with respect to individuals and others to be:

"(a) Individuals. (1) Any individual who maintains a permanent place of abode in this State is a resident.

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(b) Others. (1) Any corporation incorporated under the laws of New York, and any corporation, association, partnership, or other entity

doing business in the State or maintaining a place of business in the State...".

C. That petitioners, Captree Ventures, Inc. and Raymond W. Gimmier, were residents of New York State at the time of purchase of the vessel and were therefore liable for use tax pursuant to section 1110(A) of the Tax Law on the use of said vessel in New York State.

D. That section 1145(a)(1)(ii) provides:

"(ii) If the tax commission determines that such failure or delay was due to reasonable cause and not due to willful neglect, it shall remit all of such penalty and that portion of such interest that exceeds the interest that would be payable if such interest were computed at the rate set by the tax commission pursuant to section eleven hundred forty-two...".


There is no provision in the Tax Law for the remission of interest imposed at the minimum statutory rate.

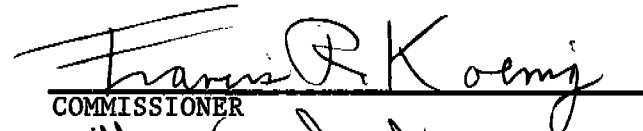
E. That the petition of Captree Ventures, Inc. and Raymond W. Gimmier is denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 28 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER