

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions

of

NORTHPORT MANAGEMENT SERVICES, INC.
T/A SEYMOUR'S,
SEYMOUR BOAT SHOPS, INC. AND
CHARLES JOSEPH QUINN, JR. AND ELIZABETH QUINN, :
OFFICERS OF SEYMOUR BOAT SHOPS, INC. :

DECISION

for Revision of Determinations or for Refunds
of Sales and Use Taxes under Articles 28 and 29 :
of the Tax Law for the Period June 1, 1981
through May 31, 1984.

Petitioners, Northport Management Services, Inc. T/A Seymour's, 63 Bayview Avenue, Northport, New York 11768, Seymour Boat Shops, Inc., 63 Bayview Avenue, Northport, New York 11768 and Charles Joseph Quinn, Jr. and Elizabeth Quinn, officers of Seymour Boat Shops, Inc., 2437 Southeast 12th Street, Pompano Beach, Florida 33062, each 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 June 1, 1981 through May 31, 1984 (File Nos. 55356, 55357, 55358 and 55359).

A hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 7, 1986 at 1:15 P.M. Petitioners appeared by Barry Bekoff. The Audit Division appeared by John P. Dugan, Esq. (Michael Gitter, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined the sales tax liability of petitioner Seymour Boat Shops, Inc., the seller in a bulk sale transaction.

11. Whether petitioner Northport Management Services, Inc. T/A Seymours, the purchaser in a bulk sale transaction, is liable for sales tax determined to be due from the seller in accordance with the provisions of section 1141(c) of the Tax Law.

111. Whether petitioners are entitled to a credit for sales tax paid to the State of Florida upon the purchase of a yacht by petitioner, Charles Joseph Quinn, Jr.

FINDINGS OF FACT

1. On June 7, 1984, the Department of Taxation and Finance received from James and Kim Atwooll, a Notification of Sale, Transfer or Assignment in Bulk bearing the date of May 11, 1984, advising that on May 1, 1984 they had purchased a marina and boat repair yard known as Seymour's from Seymour Boat Shops, Inc. (hereinafter "Seymour Boat") for a total selling price of \$1,450,000.00. The selling price of the furniture, fixtures, equipment and supplies was \$270,300.00. Bulk sales tax in the amount of \$19,596.75 was paid. There was no escrow fund. At or about the time James and Kim Atwooll purchased the business, they formed a corporation known as Northport Management Services, Inc. (hereinafter "Northport") which, after said purchase, transacted business as Seymour's.

2. On June 14, 1984, the Audit Division issued to James and Kim Atwooll a Notice of Claim to Purchaser which notified them of a possible claim for New York State and local sales and use taxes due from the seller. The said Notice of Claim to Purchaser further stated that, in spite of any provisions contained in the sales contract, no distribution of funds or property, to the extent of the amount of the State's claim, could be made before the following conditions had been met :

- a) The State Tax Commission had determined the seller's liability, if any.
- b) Payment of such liability had been made to the State.
- c) The Central Sales Tax Section of the Audit Division had authorized them to release the funds or property.

3. On July 3, 1984, the Audit Division issued a Notice to the Seller to Seymour Boat which advised that the Audit Division would be contacting said seller to make arrangements for an examination of its books and records.

4. In July of 1984, the Audit Division commenced a field audit of Seymour Boat for the period June 1, 1981 through May 31, 1984. For the period ending November 30, 1982, the Audit Division found a discrepancy of approximately \$70,000.00 between purchases as reported on the Federal income tax returns and the purchases as set forth in its books and records. This \$70,000.00 represented the total purchase price of a yacht known as Beefeater which was reported by the corporation as end of year inventory on its 1982 Federal income tax return. The Audit Division determined that sales tax in the amount of \$5,075.00 (7½ percent of \$70,000.00) was due from the corporation on its purchase of the boat. In addition, for the period June 1, 1983 through November 30, 1983, the Audit Division determined that the corporation owed sales tax in the amount of \$1,625.53 for certain fixed assets purchased during this period.

5. As a result of the aforesaid audit findings, the Audit Division, on August 30, 1984, issued notices of determination and demands for payment of sales and use taxes due to Seymour Boat, Charles Joseph Quinn, Jr. and Elizabeth Quinn, as responsible officers of Seymour Boat, and Northport as bulk sale purchaser, each in the amount of \$6,700.53 plus interest, for a total amount due of \$7,798.67 for the period June 1, 1981 through May 31, 1984. Seymour Boat

consented to the Audit Division's determination of sales tax due on the fixed asset acquisitions and this amount was paid prior to the hearing held herein. Therefore, the sole amount of tax remaining at issue for each of the petitioners is the \$5,075.00 which the Audit Division asserts is due and owing on the purchase price of the yacht.

6. On November 6, 1982, Seymour Boat entered into a charter agreement with Associated Marine Institutes, Inc. ("Associated") of Tampa, Florida to hire from Associated a yacht known as Beefeater for a term of 25 months. Pursuant to the terms of this agreement, Seymour Boat was to pay, upon execution of the agreement, the sum of \$13,800.00 as an advance payment and \$14,000.00 as a security deposit plus \$875.00 per month for 25 months. Seymour Boat was also granted an option to purchase the boat for the total purchase price of \$70,000.00, with credit toward said purchase price being given for the advance payment, security deposit and all monthly charter payments made prior to the exercise of the option. The yacht was delivered by Associated to Seymour Boat in Fort Lauderdale, Florida on November 12, 1982. During the term of the charter agreement, the vessel was to be berthed in Northport, New York during the summer and in South Florida during the winter. The yacht was in the State of New York during portions of both 1983 and 1984.

7. For the period at issue, petitioners, Charles Joseph Quinn, Jr. and Elizabeth Quinn, were domiciliaries of Florida who resided at 2437 Southeast 12th Street, Pompano Beach, Florida. Charles Joseph Quinn, Jr., Vice-president and Elizabeth Quinn, President were the sole officers of Seymour Boat. Neither in their petitions nor at the hearing held herein did these petitioners contest the Audit Division's determination that, as officers of Seymour Boat, they were persons who, pursuant to the provisions of section 1131(1) of the Tax Law, were required to collect any taxes imposed by Article 28 of the Tax Law. Petitioners,

Charles Joseph, Quinn, Jr. and Elizabeth Quinn, were, therefore, properly determined to be personally liable for sales tax due from Seymour Boat.

8. When Seymour Boat sold the business to Northport on May 1, 1984, the yacht was not part of the transaction. Upon the sale, Seymour Boat ceased its corporate existence and its officers, Charles Joseph Quinn, Jr. and Elizabeth Quinn, took the yacht with them to Florida. On November 8, 1984, petitioner Charles Joseph Quinn, Jr. paid to Associated the sum of \$25,575.00 which represented the balance due on the total purchase price of the yacht. The name of the yacht was then changed from Beefeater to Miss Heather. On the date of the purchase, Mr. Quinn paid Florida sales tax in the amount of \$3,500.00.

9. Prior to the final payment of \$25,575.00 by petitioner Charles Joseph Quinn, Jr. on November 8, 1984, Seymour Boat had made nineteen monthly payments of \$875.00 each, for a total of \$16,625.00 which, when added to the advance payment of \$13,800.00 and the security deposit of \$14,000.00, resulted in a total payment by Seymour Boat to Associated in the amount of \$44,425.00.

10. Seymour Boat was not in the business of selling boats. Its business was primarily that of repairing, mooring and/or storing boats.

11. Petitioners Seymour Boat, Charles Joseph Quinn, Jr. and Elizabeth Quinn contend that the yacht was chartered for the purpose of resale. Said petitioners further contend that the charter payments were not deducted on Seymour Boat's Federal income tax return because the yacht was put into inventory.

12. Seymour Boat never took title to the yacht and, therefore, never resold it during its corporate existence.

13. At a pre-hearing conference, the conferee concluded that petitioners were entitled, pursuant to the provisions of section 1118(7)(a) of the Tax Law, to a partial credit of \$2,975.00 for sales tax paid to the State of Florida

upon the purchase of the yacht by petitioner Charles Joseph Quinn, Jr. Petitioners did not agree to the reduction offered by the conferee and did not sign withdrawals of petition. At the hearing held herein, the Audit Division objected to the granting of such a credit since it was petitioner Charles Joseph Quinn, Jr. who purchased the yacht and paid the sales tax to the State of Florida and not Seymour Boat, the corporate entity which entered into the charter agreement, and which, as the seller in the bulk sale transaction, is primarily liable for the sales tax which was assessed pursuant to the issuance of the notices of determination and demands for payment of sales and use taxes due issued August 30, 1984.

CONCLUSIONS OF LAW

A. That section 1141(c) of the Tax Law provides, in pertinent part, that a purchaser in a bulk sale of business assets must notify the Tax Commission of the proposed sale at least ten days before taking possession of the subject of the sale or making payment therefor. Whenever the purchaser fails to give notice to the Tax Commission as required, or whenever the Tax Commission informs the purchaser that a possible claim for sales taxes exists, any sums of money or other consideration which the purchaser is required to transfer over to the seller shall be subject to a first priority right and lien for any such taxes determined to be due from the seller. Within ninety days of receipt of the notice of the sale from the purchaser, the Tax Commission shall give notice to the purchaser of the total amount of any sales taxes which the State claims to be due from the seller. For failure to comply with the provisions of section 1141(c) of the Tax Law, the purchaser is personally liable for the payment to the State of any sales taxes determined to be due from the seller up to an amount equal to the purchase price or fair market value of the assets sold.

B. That petitioner Northport, by its principal officers, James and Kim Atwooll, did not notify the Tax Commission of the proposed sale at least ten days prior to taking possession of the marina and boat repair yard. The Tax Commission, upon receipt of the notice of bulk sale, timely notified the Atwoolls not to distribute funds or property until it determined if the seller was liable for sales taxes and, if so, the extent of such liability. The Tax Commission thereafter notified the purchasers of the amount of taxes due from the seller within 90 days of receipt of the purchasers' notice of sale as required by section 1141(c) of the Tax Law.

C. That petitioner Northport transferred funds prior to being notified of the State's claim for taxes due from the seller and is, therefore, personally liable for the payment of such taxes in accordance with the provisions of section 1141(c) of the Tax Law.

D. That section 1110 of the Tax Law imposes a compensating use tax upon, among other things, the use of tangible personal property in this State which has been purchased, at retail, out of state.

E. That 20 NYCRR 526.7(a)(2) provides that, among the transactions included in the word "purchase" are exchanges, barter, rentals, leases or licenses to use or consume tangible personal property.

F. That 20 NYCRR 526.7(c)(1) provides that the terms "rental", "lease" and "license to use" refer to all transactions in which there is a transfer of possession of tangible personal property without a transfer of title to the property. Petitioner Seymour Boat took delivery of the yacht on November 12, 1982 and retained possession at all times until, shortly after the sale of the business to petitioner Northport on May 1, 1984, when petitioners Charles Joseph Quinn, Jr. and Elizabeth Quinn took the yacht to their home in Florida. As

indicated in Finding of Fact "6", supra, pursuant to the provisions of the charter agreement, the yacht was to be berthed and was, in fact, berthed in the State of New York.

G. That 20 NYCRR 531.3(a)(2) provides that the compensating use tax is due upon the use of tangible personal property which was purchased for resale or an exempt use and is subsequently withdrawn from or diverted to a taxable use by the purchaser.

H. That 20 NYCRR 532.4(b)(1) provides that the burden of proving that any receipt, amusement charge or rent is not taxable shall be upon the person required to collect the tax or the customer. Petitioner Seymour Boat was the customer in the charter of the yacht from Associated. Petitioner Seymour Boat did not sustain its burden of proving that it chartered the yacht Beefeater for purposes of resale. Even assuming, arguendo, that petitioner Seymour Boat did intend to resell the yacht, it was not, in fact, resold, but was withdrawn from inventory prior to the bulk sale and was retained for the personal use of Seymour Boat's Vice-president, petitioner Charles Joseph Quinn, Jr. The total of the payments made by petitioner Seymour Boat to Associated pursuant to the charter agreement (\$44,425.00 as enumerated in Finding of Fact "9", supra) is, therefore, subject to the New York State compensating use tax.

I. That the sale of the yacht to petitioner Charles Joseph Quinn, Jr. by Associated on November 8, 1984, upon his tender to Associated of the sum of \$25,575.00, was not subject to New York State sales or compensating use tax. At the time of said sale, petitioner Charles Joseph Quinn, Jr. was a Florida resident who purchased the yacht from a Florida vendor. Delivery was taken in Florida and the yacht, subsequent to the sale, was not brought into New York. Because the sale of the yacht to petitioner Charles Joseph Quinn, Jr. was, for

New York State sales and compensating use tax purposes, a nontaxable transaction separate and apart from the charter agreement between Associated and a resident corporation, petitioner Seymour Boat, petitioner Charles Joseph Quinn, Jr. is not entitled to a credit for sales tax paid to the State of Florida upon his purchase and registration of the yacht.

J. That the petitions of Northport Xanagement Services, Inc. T/A Seymour's, Seymour Boat Shops, Inc. and Charles Joseph Quinn, Jr. and Elizabeth Quinn, are granted to the extent indicated in Conclusions of Law "H" and "I"; that the Audit Division is directed to modify the notices of determination and demands for payment of sales and use taxes due issued August 30, 1984 accordingly; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

APR 23 1987


PRESIDENT


COMMISSIONER


COMMISSIONER