

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
NORMAN WIENER  
: :  
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 June 1, 1980  
through August 31, 1980.

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Petitioner, Norman Wiener, 860 Greenbelt Parkway, Holbrook, New York  
11741, 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,  
1980 through August 31, 1980 (File No. 55445).

A hearing was held before Frank A. Landers, Hearing Officer, at the  
offices of the State Tax Commission, Two World Trade Center, New York, New  
York, on January 14, 1987 at 1:15 P.M., with all briefs to be filed by January 28,  
1987. Petitioner appeared pro se. The Audit Division appeared by John P.  
Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUE

Whether petitioner is liable for tax on the purchase of a power boat.

FINDINGS OF FACT

1. On May 21, 1984, the Audit Division issued to petitioner, Norman Wiener,  
a Notice of Determination and Demand for Payment of Sales and Use Taxes Due  
assessing a tax due of \$1,750.00, plus interest of \$705.00, for a total amount  
due of \$2,455.00 for the period June 1, 1980 through August 31, 1980. The tax

due was based on the purchase by petitioner of a 1976 42-foot Silverton power boat identified as You and I for \$25,700.00.<sup>1</sup>

2. On June 4, 1984, petitioner timely filed a petition for a hearing to review the notice of determination.

3. In or about July 1980, petitioner, a resident of New York residing at 860 Greenbelt Parkway, Holbrook, New York, contemplated purchasing a power boat. Petitioner was advised by unnamed individuals that if he purchased a boat through a Delaware corporation and documented it with the United States Coast Guard, versus registering it with New York, that New York sales tax could be avoided. Petitioner was led to believe that if he forfeited his right to use the boat during a national disaster, that the purchase of the boat would not be subject to tax. Because he thought he could achieve substantial sales tax savings, petitioner was able to purchase You and I.

4. On July 9, 1980, petitioner executed an agreement for the purchase of You and I from Charles Chlanda of 1400 Gardiner Drive, Bay Shore, New York for \$25,700.00 to be paid at the time of closing. At or about the same time, petitioner formed a Delaware corporation, Close Encounters Marine, Inc., presumably to own You and I. Petitioner was the sole officer and shareholder of said corporation, which maintained offices at 508 Windley Road, Wilmington, Delaware. It is not known whether petitioner or the corporation purchased the vessel, but, subsequent to its purchase, the boat was documented with the United States Coast Guard in the name of the corporation. At the time of transfer, the boat was located in Bay Shore, New York.

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<sup>1</sup> The tax due was actually \$1,700.00

5. You and I was used by petitioner both within and without New York State during 1980 and 1981, and was eventually sold **in** September 1981.

6. Petitioner contends that sales tax was not paid at the time of purchase because the boat was documented with the United States Coast Guard, through a Delaware corporation, and, therefore, its purchase was not subject **to** tax.

CONCLUSIONS OF LAW

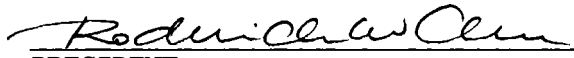
A. That section 1105(a) of the Tax Law imposes a tax upon the receipts from every retail sale of tangible personal property, except as otherwise provided in Article **28**. The purchase by petitioner of the boat You and I in Bay Shore, New York was a retail sale subject to tax pursuant to section 1105(a) of the Tax Law. Petitioner has failed to sustain the burden of proof required to show that he was not liable for said tax or that said purchase was otherwise exempt from tax.

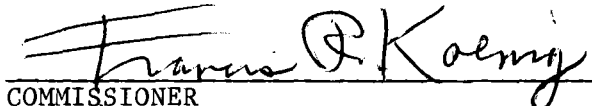
B. That the petition **of** Norman Wiener **is** denied and the Notice of Determination and Demand for Payment of **Sales** and Use Taxes Due issued May 21, 1984 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 09 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSION&