

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BENJAMIN KOWALSKI

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for ~~the years~~ June 17, 1968 :
and August 16, 1968 transactions.

State of New York
County of Albany

Katherine D. Manly, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of March, 1975, she served the within
Notice of ~~Decision~~ (or Determination) by ~~certified~~ mail upon Benjamin

Kowalski ~~(represented by)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Benjamin J. Kowalski
501 Rano Boulevard
Vestal, New York 13850

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~representative~~
~~xxx~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(represented by)~~ petitioner.

Sworn to before me this

6th day of March, 1975.

Janet Mack

Katherine D. Manly



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Saul Heckelman, Acting

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655

MR. LEISNER 457-2657

MR. COBURN 457-2896

DATED: Albany, New York
March 6, 1975

Mr. Benjamin J. Kowalski
501 Rano Boulevard
Vestal, New York 13850

Dear Mr. Kowalski:

Please take notice of the **Determination**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1139 and 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXX~~ Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
BENJAMIN KOWALSKI	:	DETERMINATION
for a 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 17, 1968	:	
through August 16, 1968.	:	

Applicant, Benjamin Kowalski, applied for a 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 17, 1968 through August 16, 1968.

A formal hearing was held at the offices of the State Tax Commission, Binghamton, New York, on June 24, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer appeared personally and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Was the taxpayer entitled to a refund of sales tax on a 35 foot boat which he returned to the seller?

FINDINGS OF FACT

1. The taxpayer, Benjamin Kowalski, paid \$360.00 in New York State sales tax on a yacht on June 17, 1968.

2. A Notice of Denial of his sales tax refund claim was issued on March 6, 1969, against the taxpayer under Claim No. 3003.

3. The taxpayer applied for a revision of the sales tax refund denial determination.

4. The taxpayer, a Coast Guard Commander, on his retirement purchased a 35 foot Chris Craft Clipper boat on June 17, 1968, from a boat marine seller for \$18,000.00 and executed bank financing.

5. The taxpayer, on a shakedown cruise, immediately ran into troubles and disputes over bent shafts and propellers, which conditions were not in any way apparent when the yacht had been idled at dockside.

6. Additionally, the taxpayer and the seller developed strong misunderstandings about dry-docking and winter storage, open and covered.

7. Finally, after the taxpayer and his wife discussed the matter, the taxpayer took the yacht back to the seller and left it there.

8. Thereafter, the taxpayer received a full refund of the \$18,000.00 sales price and \$200.00 for the propeller shafts he installed, but the seller did not refund the sales tax of \$360.00.

9. The Sales Tax Bureau denied the refund because there were certain title documents issued to the taxpayer and subsequently to a new purchaser who purchased the yacht from the boat marina seller. On all the facts, the yacht was returned to the seller and the sale cancelled as well as the bank financing terminated.

CONCLUSIONS OF LAW

A. The sale contract was cancelled and the yacht was returned to the seller, under section 1132(e) of the Sales Tax Law.

B. The sales tax of \$360.00 shall be refunded to the taxpayer with interest to the date of refund.


DATED: Albany, New York
March 6, 1975

STATE TAX COMMISSION

PRESIDENT



COMMISSIONER



COMMISSIONER