

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

W.F. & R. Boat Builders Inc.  
613 Abeel St.  
Kingston, NY 12403

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



cc: Petitioner's Representative  
Robert B. O'Reilly  
61 Maiden Ln.  
Kingston, NY 12401  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
W.F. & R. Boat Builders Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 9/1/72-8/31/75. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Robert B. O'Reilly the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

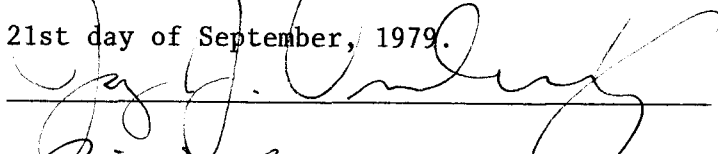
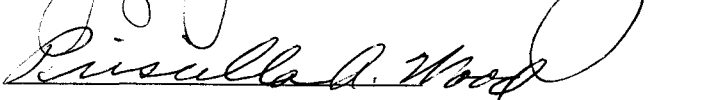
Mr. Robert B. O'Reilly  
61 Maiden Ln.  
Kingston, NY 12401

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this

21st day of September, 1979.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
W.F. & R. Boat Builders Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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State of New York  
County of Albany

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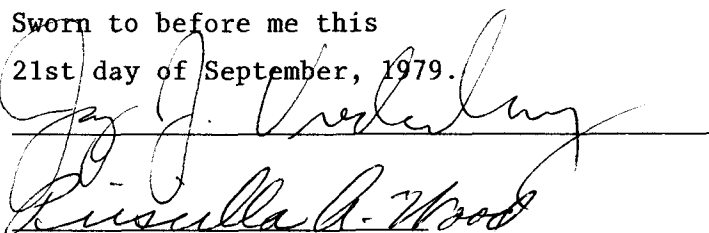
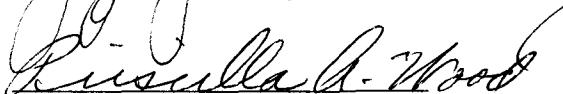
W.F. & R. Boat Builders Inc.  
613 Abeel St.  
Kingston, NY 12403

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Sworn to before me this

21st day of September, 1979.

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

Thomas A. Feeney Corp.  
613 Abeel St.  
Kingston, NY 12403

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

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Sincerely,



cc: Petitioner's Representative  
Robert B. O'Reilly  
61 Maiden Ln.  
Kingston, NY 12401  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Thomas A. Feeney Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
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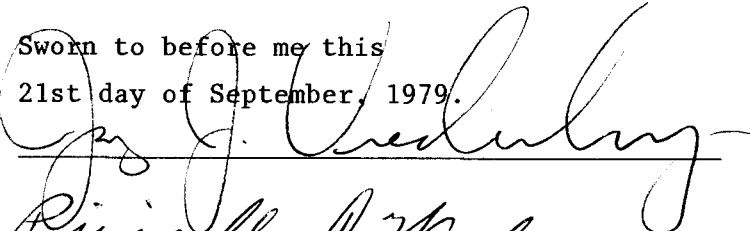

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Robert B. O'Reilly the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Robert B. O'Reilly  
61 Maiden Ln.  
Kingston, NY 12401

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 Postal Service within the State of New York.

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Sworn to before me this  
21st day of September, 1979.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Thomas A. Feeney Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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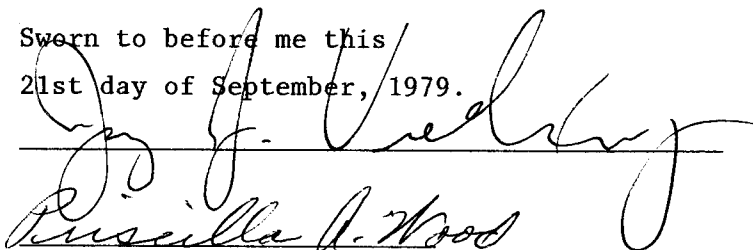
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Thomas A. Feeney Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas A. Feeney Corp.  
613 Abeel St.  
Kingston, NY 12403

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
21st day of September, 1979.

  
\_\_\_\_\_  
Priscilla A. Wood

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

Tug Rose A. Feeney Corp.  
- 613 Abeel St.  
Kingston, NY

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

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Sincerely,



cc: Petitioner's Representative  
Robert B. O'Reilly  
61 Maiden Ln.  
Kingston, NY 12401  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Tug Rose A. Feeney Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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Sales & Use Tax :  
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State of New York  
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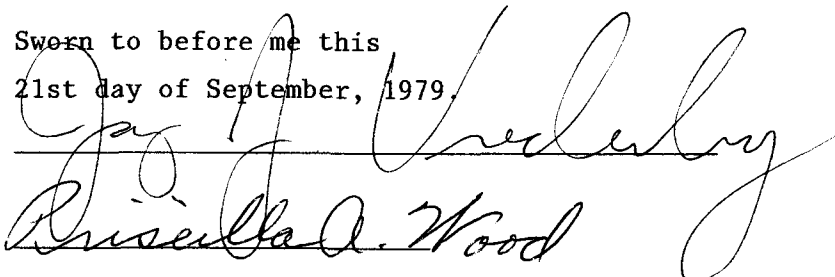

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Robert B. O'Reilly the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Robert B. O'Reilly  
61 Maiden Ln.  
Kingston, NY 12401

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 Postal Service within the State of New York.

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Sworn to before me this  
21st day of September, 1979.



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Tug Rose A. Feeney Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
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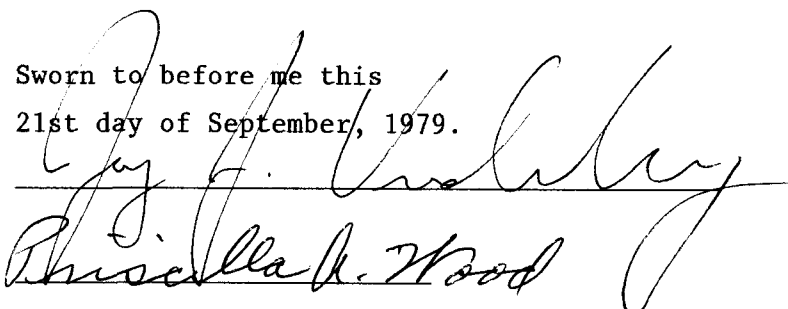
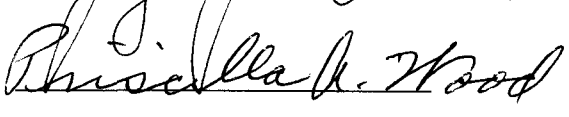
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Tug Rose A. Feeney Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tug Rose A. Feeney Corp.  
613 Abeel St.  
Kingston, NY

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 Postal Service within the State of New York.

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21st day of September, 1979.

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

The Feeney Marine Corporation  
613 Abeel St.  
Kingston, NY

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

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Sincerely,



cc: Petitioner's Representative  
Robert B. O'Reilly  
61 Maiden Ln.  
Kingston, NY 12401  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

The Feeney Marine Corporation :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Sales & Use Tax :

under Article 28 & 29 of the Tax Law

for the Period 9/1/72-8/31/75. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Robert B. O'Reilly the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Robert B. O'Reilly  
61 Maiden Ln.  
Kingston, NY 12401

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 Postal Service within the State of New York.

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Sworn to before me this

21st day of September, 1979.

*Jay Vredenburg*  
*Priscilla A. Wood*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

The Feeney Marine Corporation :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Sales & Use Tax :

under Article 28 & 29 of the Tax Law

for the Period 9/1/72-8/31/75. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon The Feeney Marine Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Feeney Marine Corporation  
613 Abeel St.  
Kingston, NY

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this

21st day of September, 1979.

*Jay J. Vredenburg*  
*Russella A. Wood*

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

Barge Vegoil No. 6 Corporation  
613 Abeel St.  
Kingston, NY

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

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Sincerely,



cc: Petitioner's Representative  
Robert B. O'Reilly  
61 Maiden Ln.  
Kingston, NY 12401  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Barge Vegoil No. 6 Corporation :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Sales & Use Tax :

under Article 28 & 29 of the Tax Law

for the Period 9/1/72-8/31/75. :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Barge Vegoil No. 6 Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

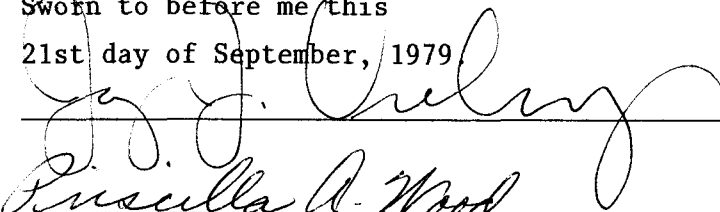
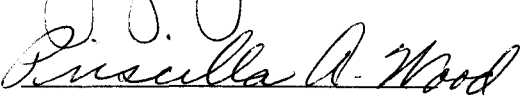
Barge Vegoil No. 6 Corporation  
613 Abeel St.  
Kingston, NY

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Sworn to before me this

21st day of September, 1979

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Barge Vegoil No. 6 Corporation :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
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State of New York  
County of Albany

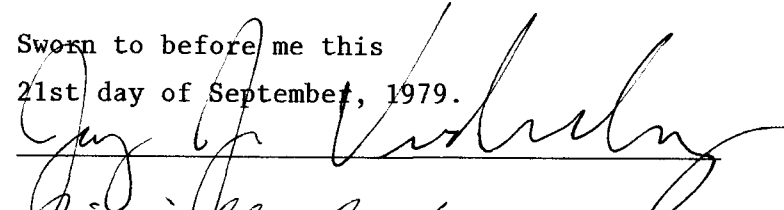

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61 Maiden Ln.  
Kingston, NY 12401

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Sworn to before me this  
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## STATE TAX COMMISSION

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on July 26, 1977 at 1:15 P.M. Applicants appeared by Robert B. O'Reilly, PA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).



ISSUE

Whether the payments made by a lessee for services performed in restoring or reconverting applicants' vessels to the condition the vessels were in prior to alterations by or for that lessee, are payments subject to sales tax.

FINDINGS OF FACT

1. Applicants, W. F. & R. Boat Builders, Inc., Tug Thomas A. Feeney Corporation, Tug Rose A. Feeney Corp., Barge Vegoil No. 6 Corporation and The Feeney Marine Corporation, are five corporations that own barges which they lease to contractors or transporters of material.

2. On April 6, 1976, the Sales Tax Bureau issued Notices of Determination and Demand for Payment of Sales and Use Taxes Due to each of the five applicants for the period September 1, 1972 to August 31, 1975, stating therein additional tax plus interest, based on "jurisdictional errors" and additional taxable sales.

3. The parties agree and stipulate that the tax liability at issue herein is restricted to the amount stated next to locality code 5152 on the above notices and that all other taxes for the period have been paid. The amounts so indicated are: W. F. & R. Boat Builders, Inc. - \$2,275.00, Tug Thomas A. Feeney Corporation - \$1,400.00, Tug Rose A. Feeney Corp. - \$1,505.00, Barge Vegoil No. 6 Corporation - \$2,275.00 and The Feeney Marine Corporation - \$2,275.00. The additional sales tax in every instance but one was

attributed to services performed in Kingston, New York, on vessels returned by the same lessee during the quarter ended August 31, 1975. This is so except in the case of The Feeney Marine Corporation, where the service was performed in the quarter ending February 28, 1975.

4. The applicants leased vessels to Perini North River Associates, pursuant to a "Bareboat Charter" whereunder the charterer has all the responsibility. The "charter" in evidence by and between Barge Vegoil No. 6 Corporation and Perini North River Associates is the same as that between said charterer and the other four applicants herein. The Bareboat Charter provided in pertinent part that:

"...installation of cranes and fixtures and machinery appurtenant thereto may be made by Charterer during the term of this Charter...Charterer shall remove all Crane Equipment from Vessel prior to the expiration...of this Charter and shall re-deliver Vessel to Owner thereafter as tight, staunch, strong, seaworthy and in all respects perfect condition." (p. 9)

"...Charterer further warrants that, at no time during the term of this Charter, shall Vessel be used for the carriage of goods in interstate commerce...." (p.5)

"Vessel will be classed by the American Bureau of Shipping as 'Barge A1 - Bays, Rivers and Sounds'." (p. 9)

"Charterer assumes full responsibility for the Vessel, its use and operation during the entire Charter period. Charterer agrees to maintain and preserve Vessel in good condition and repair making all necessary replacements and repairs at Charterer's sole cost and expense." (p. 6)

5. The Charterer employed the rented barges in the construction of a sewage disposal plant on the North River, below the George Washinton Bridge. To adapt the barges to the tasks at hand, the Charterer made extensive changes in the leased barges, including fastening one barge to another, cutting of the barges' roofs, installing machinery, bulkheads and dressing rooms, and rewiring to facilitate large generators which were then installed. The major portion of this work was the joining of barges by use of large I-beams, which barges were then used as a drilling barge which required approval of the American Bureau of Shipping for issuance of a Bays, Rivers and Sounds Certificate.

6. At the termination of the Charter, the vessels were returned to applicants. In their altered state, the vessels were not suitable for use by any prospective charterer and required extensive reconversion to return them to their pre-charter state, before the necessary certificates could be obtained and the vessels could be made fit for further leasing.

7. All the services performed on the vessels, which give rise to the issue herein, were performed by Reliance Marine Transportation and Construction Corp. in Kingston, New York. Bills for the services were sent to applicants. Applicants, in turn, would advise the charterer of the cost and receive payment therefor.

CONCLUSIONS OF LAW

A. That section 1105(c)(3) of the Tax Law provides, in part, that the sales tax is imposed on the receipts from every sale of services for maintaining, servicing and repairing tangible personal property, except with respect to commercial vessels primarily engaged in interstate or foreign commerce and property used by or purchased for the use of such vessels for maintenance and repairs.

B. That the vessels leased and subsequently repaired were not commercial vessels primarily engaged in interstate or foreign commerce during the period here in issue nor was evidence adduced to establish that the vessels were engaged primarily in interstate or foreign commerce either prior to or subsequent to the lease to Perini North River Associates.

C. That Article 28 of the Tax Law does not provide specific exemption for "restoring" or "reconverting" vessels and that the services performed, though extensive, still constituted repair of the vessels and that such services are subject to the tax imposed in accordance with Conclusion of Law "A", above.

D. That the application of W. F. & R. Boat Builders, Inc., Tug Thomas A. Feeney Corporation, Tug Rose A. Feeney Corp., Barge Vegoil No. 6 Corporation and The Feeney Marine Corporation

are denied and the notices of determination and demand for payment of sales and use taxes due issued April 6, 1976 are sustained.


DATED: Albany, New York

SEP 21 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER