

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Tylercraft, Inc. :
and Ted Tyler, Individually & as Officer : 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 12/1/70 - 8/31/73. :

State of New York
County of Albany

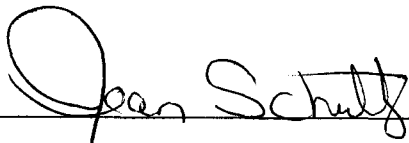
Jean Schultz, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the day of , 1980, she served the within notice of by mail upon Tylercraft, Inc., and Ted Tyler, Individually & as Officer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

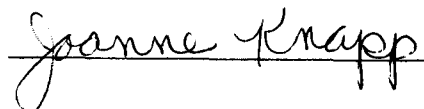
Tylercraft, Inc.
and Ted Tyler, Individually & as Officer
814 Jasmine Ave.
Norfolk, VA 23502

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
day of , 1980.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Tylercraft, Inc. :
and Ted Tyler, Individually & as Officer : AFFIDAVIT OF MAILING
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State of New York
County of Albany

Jean Schultz, 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 day of , 1980, she served the within notice of by mail upon Ted Tyler 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. Ted Tyler
80 Grassmere Ave.
Oakdale, NY 11769

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
day of , 1980.

Joanne Knapp

Jean Schultz

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

Tylercraft, Inc.
and Ted Tyler, Individually & as Officer
814 Jasmine Ave.
Norfolk, VA 23502

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 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 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Ted Tyler
80 Grassmere Ave.
Oakdale, NY 11769
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
TYLERCRAFT, INC.	:	DETERMINATION
and	:	
TED TYLER	:	
Individually and as Officer	:	
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	:	
December 1, 1970 through August 31, 1973.	:	

Applicants, Tylercrafft, Inc. and Ted Tyler, individually and as Officer, 814 Jasmine Avenue, Norfolk, Virginia 23502 filed an application 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 December 1, 1970 through August 31, 1973 (File No. 16752).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 19, 1979 at 1:15 P.M. Applicants appeared by Ted Tyler, President. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether certain sales made by applicant Tylercrafft, Inc. were delivered to the purchaser outside of New York State.

FINDINGS OF FACT

1. Applicant, Tylercrafft, Inc. (Tylercrafft) located at 80 Grassmere Avenue, Oakdale, New York is engaged in the manufacture and sale of sailboats.

2. On March 6, 1974, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Tylercrafft, Inc. and Ted Tyler, individually and as Officer, for the period December 1, 1970 through August 31, 1973 in the amount of \$17,353.86 plus penalty and interest of \$4,215.32 for a total of \$21,569.18. The additional tax due was based on a discrepancy in gross sales and disallowed nontaxable sales.

3. At an informal conference held in the Suffolk District Office, the Sales Tax Bureau recommended that Tylercrafft's tax liability be reduced to \$5,089.90 on the basis of computational errors found in the original audit and substantiation that certain sales were not subject to tax.

4. Tylercrafft provided additional documentation regarding nontaxable sales at a Tax Appeals Bureau conference held July 12, 1977 which further reduced the amount of tax due to \$2,611.44. Counsel for the Audit Division stipulated that the adjustments made at the two conferences were proper.

5. The following five transactions remain at issue and represent tax due of \$2,587.66 (tax due of \$23.78 is not being contested):

<u>Period Ending</u>	<u>Purchaser</u>	<u>Amount of sale</u>	<u>Tax Due</u>
August 31, 1971	Guy Wardelly	\$ 2,625.00	\$ 157.50
	Robert Otos	10,594.00	635.64
August 31, 1973	Alexander Ball	9,300.00	\$ 651.00
	Francis Kenny	2,200.00	154.00
	Robert Otos	14,136.00	989.52

6. Tylercrafft contended that the boat sold to Guy Wardelly was delivered to Saddlebrook, New Jersey by Robert McCormick, who regularly delivered boats for Tylercrafft during the period at issue. Tylercrafft contended the two boats sold to Robert Otos were delivered to Florida. In support of this contention, Tylercrafft

submitted a watercraft registration from the State of Minnesota which indicated Robert Otos of Elbow Lake, Minnesota as the owner of a 1971 Tylercrafft and an insurance renewal certificate from an agency in Panama City, Florida that named Robert Otos as the insured.

7. Tylercrafft introduced a letter from Francis Kenny which verified that the boat sold to Mr. Kenny was delivered to Manasquaw, New Jersey.

CONCLUSIONS OF LAW

A. That section 1132(c) of the Tax Law specifically provides, in part, that it shall be presumed that all receipts for property are subject to tax until the contrary is established, and the burden of proving that any receipt is not taxable shall be upon the person required to collect tax.

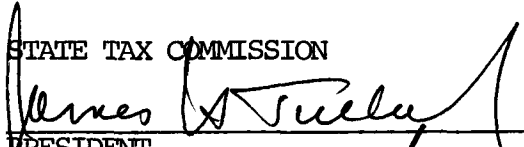
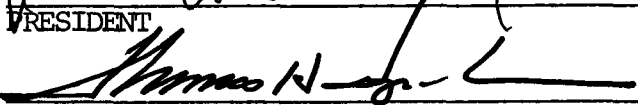
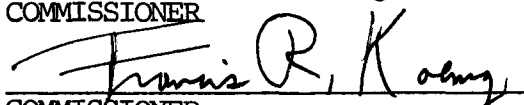
B. That Tylercrafft failed to establish by the evidence presented that its sales to Guy Wardelly, Robert Otos and Alexander Ball were not subject to tax; therefore, Tylercrafft is liable for the sales taxes imposed on said transactions in accordance with the provisions of section 1105(a) of the Tax Law.

C. That Tylercrafft's sale to Francis Kenny in the amount of \$2,200.00 is not subject to tax; therefore, the tax assessed on such sale of \$154.00 is cancelled.

D. That the application of Tylercrafft, Inc. and Ted Tyler, individually and as Officer, is granted to the extent of reducing the tax due from \$17,353.86 to \$2,457.44; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 6, 1974, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

FEB 29 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

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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 28th day of March, 1980, he served the within notice of Determination by mail upon Tylercrafft, Inc., and Ted Tyler, Individually & as Officer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tylercrafft, Inc.
and Ted Tyler, Individually & as Officer
1439 Montauk Hwy.
Oakdale, NY 11769
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
28th day of March, 1980.

Janne Knapp

J. Vredenburg