

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

July 8, 1983

Ralph B. Delano, Jr.
Lane Gate Rd.
Cold Springs, NY 10516

Dear Mr. Delano:

Please take notice of the Decision 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 Law 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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
James J. Egan, Jr.
650 Madison Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ralph B. Delano, Jr. :
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 Ended 3/31/78. :
_____ :

State of New York
County of Albany

Connie Hagelund, 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 8th day of July, 1983, she served the within notice of Decision by certified mail upon Ralph B. Delano, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ralph B. Delano, Jr.
Lane Gate Rd.
Cold Springs, NY 10516

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
8th day of July, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ralph B. Delano, Jr. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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under Article 28 & 29 of the Tax Law for the :
Period Ended 3/31/78. :

State of New York
County of Albany

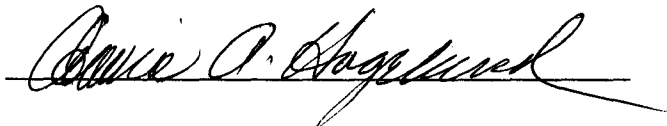
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon James J. Egan, Jr. the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James J. Egan, Jr.
650 Madison Ave.
New York, NY 10022

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
8th day of July, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RALPH B. DE LANO, JR.	:	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 Ended March 31,	:	
1978.	:	

Petitioner, Ralph B. De Lano, Jr., Lane Gate Road, Cold Springs, New York 10516, 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 ended March 31, 1978 (File No. 24393).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 2, 1981 at 9:15 A.M. Petitioner appeared by James J. Egan, Jr., Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether petitioner paid sales tax on the purchase of a boat whereby the purchase agreement designated the inclusion of sales tax in the purchase price.

FINDINGS OF FACT

1. On May 2, 1977, petitioner completed the purchase of a boat from Jean V. Bransfield, attorney for the owner of record, Roland V. Phillips, for a total sum of \$12,700.00. Petitioner took delivery in Amityville, New York.
2. On September 21, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Ralph B. De Lano, Jr.

in the amount of \$889.00 in tax, plus penalties and interest of \$302.26, for a total of \$1,191.26. The Notice was issued on the grounds that the petitioner failed to substantiate that sales tax was paid on the above purchase.

3. Petitioner contended that the sales tax was included in the purchase price of the boat and was remitted to the seller. Petitioner introduced the written agreement for the purchase which indicated a deposit of \$1,000.00 with the remainder of \$11,700.00 to be paid upon sale. A handwritten notation was added to the agreement and initialed by both parties as follows: "The party of the second part warrants that the vessel is free and clear of all liens. Price includes NY sales tax."

The bill of sale dated May 2, 1977 indicated "Total Received for Sale of Boat \$12,700.00."

4. Petitioner argued that the requirement to separately state the tax under section 1132(a) of the Tax Law is upon the person required to collect the tax, not on the customer who has no control over the documents in connection with the sale. Further, petitioner argued that the person required to collect the tax is personally liable for the tax collected under section 1133(a) and not the customer.

5. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That petitioner purchased tangible personal property, namely a boat, subject to the sales tax imposed by section 1105(a) of the Tax Law.

B. That section 1132(a) of the Tax Law provides, in pertinent part, as follows:

"Every person required to collect tax shall collect the tax from the customer when collecting the price...to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price...paid or payable, the tax shall be

stated, charged and shown separately on the first of such documents given to him...".

C. That the agreement for the sale of the boat failed to list the sales tax as a separate amount in accordance with section 1132(a). That, further, the bill of sale listed \$12,700.00 as the amount received for the sale of the boat with no mention of sales tax.

D. That section 1133(b) of the Tax Law provides:

"Where any customer has failed to pay a tax imposed by this article to the person required to collect the same,...such tax shall be payable by the customer directly to the Tax Commission...".

E. That the petitioner failed to show that sales tax was paid on the purchase of the boat and is therefore liable for such tax in accordance with section 1133(b) of the Tax Law.

F. That penalty and interest in excess of the minimum statutory rate imposed pursuant to section 1145 of the Tax Law are cancelled.

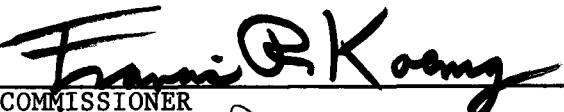
G. That the petition of Ralph B. De Lano, Jr. is granted to the extent of Conclusion of Law "F"; that the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 21, 1978, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 08 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

P 481 207 990

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
James J. Egan, Jr.	
Street and No.	
650 Madison Ave.	
P.O., State and ZIP Code	
New York, NY 10022	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 207 989

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Ralph B. Delano, Jr.	
Street and No.	
Lane Gate Rd.	
P.O., State and ZIP Code	
Cold Springs, NY 10516	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
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