

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

July 8, 1983

Bernard & Rosalind Mann  
1145 Buckingham Rd.  
Fort Lee, NJ 07024

Dear Mr. & Mrs. Mann:

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  
Robert K. Ruskin  
Herrick & Feinstein  
2 Park Ave.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Bernard & Rosalind Mann	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Sales & Use Tax	:	
under Article 28 & 29 of the Tax Law for the	:	
Period Ending 11/30/78.	:	

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 Bernard & Rosalind Mann, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard & Rosalind Mann  
1145 Buckingham Rd.  
Fort Lee, NJ 07024

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 :  
Bernard & Rosalind Mann :  
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 Ending 11/30/78. :  
\_\_\_\_\_

State of New York  
County of Albany

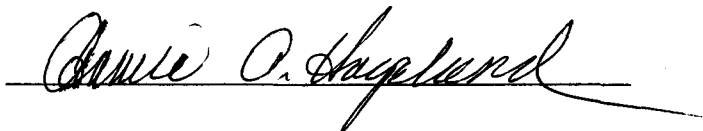
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Robert K. Ruskin the representative of the petitioners in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

Robert K. Ruskin  
Herrick & Feinstein  
2 Park Ave.  
New York, NY 10016

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

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In the Matter of the Petition :  
of :  
BERNARD MANN and ROSALIND MANN : 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 November 30, :  
1978. :

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Petitioners, Bernard Mann and Rosalind Mann, 1145 Buckingham Road, Fort Lee, New Jersey 07024, 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 November 30, 1978 (File No. 25731).

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 August 6, 1981 at 10:30 A.M. Petitioners appeared by Robert K. Ruskin, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioners are liable for sales or use tax on their purchase of a racehorse, "Orson Lobell".

FINDINGS OF FACT

1. On March 16, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioners Bernard Mann and Rosalind Mann for tax due of \$2,695.00, plus penalty and interest of \$323.40, for a total of \$3,018.40. The Notice was issued as a result of

petitioners' failure to pay sales tax on the purchase of a racehorse, "Orson Lobell", for the sum of \$38,500.00.

2. On June 23, 1978, "Orson Lobell" was picked up at Yonkers Raceway and transported to The Meadowlands in New Jersey by Carl LeCause under the direction of petitioners. "Orson Lobell" was examined by a veterinarian at The Meadowlands and upon approval for its soundness and fitness for racing, a check in payment was turned over to an agent for Victoria Sue Enterprises, the seller.

3. It was the Audit Division's position that delivery of "Orson Lobell" took place at Yonkers Raceway. Further, petitioners were participating in race meetings within New York State and they were residents of New York State and the localities where race meetings took place. Petitioners owned and ran other racehorses at Yonkers Raceway during the time "Orson Lobell" was purchased. "Orson Lobell" ran at Yonkers Raceway sometime during December, 1978.

4. Petitioners argued that the purchase of "Orson Lobell" took place in New Jersey after the horse was approved by the veterinarian. Petitioners also argued since they are residents of New Jersey, no tax is due New York State or any of its localities.

5. The application of penalty and interest was not raised by petitioners.

#### CONCLUSIONS OF LAW

A. That 20 NYCRR 525.2(a)(2) designates the sales tax as a "transactions tax", liability for the tax occurring at the time of the transaction. Generally speaking, the taxed transaction is an act resulting in the receipt of consideration for the transfer of title, or possession, or both to property from one person to another. The time or method of payment is immaterial, since the tax becomes due at the time of transfer of property.

That 20 NYCRR 525.2(a)(3) designates the sales tax as a "destination tax", that is, the point of delivery or point at which possession is transferred by the seller to the purchaser or his designee controls both the tax incident and the tax rate.

B. That "Orson Lobell" was transferred to the petitioners' designee, Carl LaCause, at Yonkers Raceway; therefore, the sales tax imposed pursuant to section 1105(a) of the Tax Law is due and owing. The tax due, however, is limited to the amount determined by the Audit Division.

C. That 20 NYCRR 526.15 (b)(2) defines resident as any person while engaged in any manner in carrying on in this State any employment, trade, business or profession. That even if "Orson Lobell" had been delivered to the petitioners by the seller in New Jersey, a use tax would be due pursuant to section 1110 of the Tax Law upon its entrance in New York State at Yonkers Raceway in December, 1978 by virtue of petitioners being residents thereof in carrying on racing activities.

D. That the petition of Bernard Mann and Rosalind Mann is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 16, 1979 is sustained with applicable penalties and interest thereon.


DATED: Albany, New York

JUL 08 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 481 208 005

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <b>Bernard &amp; Rosalind Mann</b>	
Street and No. <b>1145 Buckingham Rd</b>	
P.O., State and ZIP Code <b>Fort Lee, NJ 07024</b>	
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 481 208 006

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <b>Robert K. Ruskin Herrick + Feinstein</b>	
Street and No. <b>2 Park Ave.</b>	
P.O., State and ZIP Code <b>New York, NY 10016</b>	
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