

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Captree Ventures, Inc.
and Raymond W. Gimmmler

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Sales & Use Tax
under Article 28 & 29 of the Tax Law for the
Period Ending 8/31/80.

:

:

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 28th day of June, 1985, he served the within notice of decision by certified mail upon Captree Ventures, Inc., and Raymond W. Gimmmler the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Captree Ventures, Inc.
and Raymond W. Gimmmler
9 Seawane Rd.
E. Rockaway, NY 11518

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 June, 1985.

David Parchuck

James A. Highland

Authorized to administer oaths
pursuant to Tax Law section 174

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

June 28, 1985

Captree Ventures, Inc.
and Raymond W. Gimmler
9 Seawane Rd.
E. Rockaway, NY 11518

Gentlemen:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CAPTREE VENTURES, INC.	:	DECISION
AND RAYMOND W. GIMMLER	:	
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 Ending August 31,	:	
1980.	:	

Petitioners, Captree Ventures, Inc. and Raymond W. Gimmmler, 9 Seawane Road, East Rockaway, New York 11518, 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 ending August 31, 1980 (File No. 47453).

A formal hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on March 11, 1985 at 9:15 A.M. Petitioner Raymond W. Gimmmler appeared pro se and as president of Captree Ventures, Inc. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether petitioners, Captree Ventures, Inc. and Raymond W. Gimmmler, are liable for tax on the purchase of a vessel.

II. If so, whether petitioners are liable for interest on the amount of tax due from the due date to the date payment is made.

FINDINGS OF FACT

1. On July 29, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the petitioners, Captree Ventures, Inc. ("the corporation") and Raymond W. Gimmmler, for taxes

due of \$2,450.00, plus interest of \$813.47, for a total amount due of \$3,263.47 for the period ending August 31, 1980.

The tax due was based on the purchase by petitioners of a 1969 42-foot vessel identified as "The Wake Maker" for \$35,000.00.

2. On October 18, 1983, petitioners timely filed a petition for a hearing to review the notice of determination.

3. In or about August of 1980, petitioner Gimmler, a resident of New York State, arranged the purchase of "The Wake Maker" from a certified broker at the Toms River Boatyard in Toms River, New Jersey. Petitioner Gimmler was advised by an official of the Bank of North America, from whom he was negotiating a \$25,000.00 mortgage for the vessel, that by continuing the documentation that was presently on the vessel and forming a Delaware corporation, that New York sales tax could be avoided.

Petitioner Gimmler was referred to Ship or Sail Brokerage Co., Inc. which arranged the formation of Captree Ventures, Inc., a Delaware corporation, for the purpose of purchasing and owning the vessel. Petitioner Gimmler was the president and sole stockholder of Captree Ventures, Inc. Ship or Sail Brokerage Co., Inc. charged petitioner Gimmler \$545.00 for these services.

4. It is not known whether petitioner Gimmler or the corporation purchased the vessel, but on August 18, 1980, the vessel was purchased and immediately transferred from its New Jersey location into New York State by petitioner Gimmler.

5. Petitioner Gimmler, a registered New York State Lobbyist and Public Relations Consultant for the Uniformed Fire Officers Association, used the vessel for business and pleasure. The vessel remained in New York State for the remainder of 1980. For the entire year 1981, the vessel was used

exclusively in Connecticut. In 1982, the vessel was returned to New York State at Sag Harbor and was used in and around New York State until June, 1984 when it was sold and the mortgage paid. Captree Ventures, Inc. was dissolved on July 26, 1984.

6. At the time of purchase of the vessel, the corporation maintained a nexus in New York State. In petitioner Gimmler's words, "(the corporation) is me in New York." Petitioner Gimmler testified that the corporation had a Delaware address; however, he did not know what was located at that address. Neither petitioner has alleged nor established the conduct of business exclusively outside New York State by petitioner Captree Ventures, Inc.

7. Petitioner Gimmler was first made aware of a possible tax liability on the purchase of the vessel in a letter from the Audit Division on July 19, 1983. He contends that he should not be held liable for interest on the tax due prior to said date. Petitioner Gimmler also claims that he was advised by a representative of the Audit Division that interest would cease to accumulate if he filed a petition for a hearing.

CONCLUSIONS OF LAW

A. That section 1110 of the Tax Law provides, in pertinent part, for the imposition of a use tax for the use within this state of any tangible personal property (Tax Law §1110[A]).

B. That 20 NYCRR 526.15 defines "resident" with respect to individuals and others to be:

"(a) Individuals. (1) Any individual who maintains a permanent place of abode in this State is a resident.

* * *

(b) Others. (1) Any corporation incorporated under the laws of New York, and any corporation, association, partnership, or other entity

doing business in the State or maintaining a place of business in the State..."

C. That petitioners, Captree Ventures, Inc. and Raymond W. Gimmmler, were residents of New York State at the time of purchase of the vessel and were therefore liable for use tax pursuant to section 1110(A) of the Tax Law on the use of said vessel in New York State.

D. That section 1145(a)(1)(ii) provides:

"(ii) If the tax commission determines that such failure or delay was due to reasonable cause and not due to willful neglect, it shall remit all of such penalty and that portion of such interest that exceeds the interest that would be payable if such interest were computed at the rate set by the tax commission pursuant to section eleven hundred forty-two..."


There is no provision in the Tax Law for the remission of interest imposed at the minimum statutory rate.

E. That the petition of Captree Ventures, Inc. and Raymond W. Gimmmler is denied.

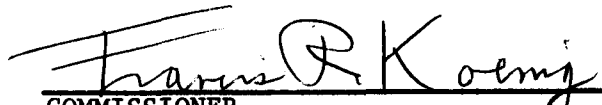
DATED: Albany, New York

STATE TAX COMMISSION



JUN 28 1985



PRESIDENT



COMMISSIONER

COMMISSIONER

P 693 169 992

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Send to	<i>Captree Ventures Inc.</i>
Street and No.	<i>9 Highland St. (iml)</i>
P.O. State and ZIP Code	<i>9 Seawick Rd.</i>
Postage	<i>E. Rockaway NY 11518</i>
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	