

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Dirk J. Oudemool, Inc.

: 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 11/30/77.

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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon Dirk J. Oudemool, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dirk J. Oudemool, Inc.
Wilmington Tower
P.O. Box 2306
Wilmington, DE 19899

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
3rd day of October, 1985.

David Parchuck

James O. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dirk J. Oudemool, Inc. :

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 11/30/77.

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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon Bruce B. Roswig, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bruce B. Roswig
108 W. Jefferson St.
Syracuse, NY 13202

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 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
3rd day of October, 1985.

David Parchuck

James A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 3, 1985

Dirk J. Oudemool, Inc.
Wilmington Tower
P.O. Box 2306
Wilmington, DE 19899

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: Petitioner's Representative
Bruce B. Roswig
108 W. Jefferson St.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DIRK J. OUDEMPOOL, INC.	:	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 November 30,	:	
1977.	:	

Petitioner, Dirk J. Oudemool, Inc., Wilmington Tower, P.O. Box 2306, Wilmington, Delaware 19899, 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 November 30, 1977 (File No. 42870).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on November 27, 1984 at 9:15 A.M., with all briefs to be submitted by February 15, 1985. Petitioner appeared by Bruce B. Roswig, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq. of counsel).

ISSUE

I. Whether a boat purchased by petitioner was delivered outside New York State and therefore not subject to sales tax.

II. Whether petitioner was a nonresident of New York State at the time it purchased the boat.

III. Whether penalty and that portion of interest exceeding the minimum statutory rate should be cancelled.

FINDINGS OF FACT

1. Petitioner, Dirk J. Oudemool, Inc., was incorporated in the State of Delaware on April 22, 1976. The sole officer and stockholder of petitioner was Dirk J. Oudemool who resided in Syracuse, New York. The purpose of the corporation was to own and operate a boat.

2. On April 23, 1976, petitioner purchased a 42' 1969 Chris Craft Commander Salon Cruiser, "Defense Rests", from Tamco Marine, Inc. for \$48,000.00. Tamco Marine, Inc. is located in Buffalo, New York. The invoice indicated F.O.B. Rochester and that a \$5,000.00 deposit was received with the balance to be paid in full by April 30, 1976.

A condition of the sale was the completion of a satisfactory demonstration of all mechanical and electrical systems. This demonstration took place on April 30, 1976 on Lake Ontario. The seller's representative appeared at Oswego Harbor where Mr. Oudemool, on petitioner's behalf, and a mechanic hired by petitioner boarded the boat. The boat was taken out on to Lake Ontario approximately one mile north of Oswego Harbor where various tests of the boat were performed. Mr. Oudemool was satisfied with the performance of the boat and at that time exchanged money for a bill of sale and other documents. Mr. Oudemool then piloted the boat back to Oswego Harbor, discharged the seller's representative and continued on to Syracuse.

3. Immediately after taking possession of the boat, petitioner moored and stored the boat at Anchorage Marina, Bridgeport, New York, until 1979. In 1979, the boat was moored at Lakeshore Yacht and Country Club in Oneida, New

York. The boat was not used in New York during the month of August. The boat was used primarily by Mr. Oudemool.

4. The boat was mortgaged by the Bank of New York in Syracuse and was insured through a Syracuse insurance agent.

5. The Audit Division observed petitioner's boat at a marina in New York. Since the boat did not have a New York registration, inquiries were sent to petitioner in order to determine if the boat was subject to sales or use tax.

On December 13, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for taxes due of \$7,350.00, plus penalty of \$1,837.00 and interest of \$4,561.00, for a total of \$13,748.00. The amount of tax was computed based on an estimated sales price of \$105,000.00 (42' boat X \$2,500 per foot).

At the hearing, counsel for the Audit Division conceded that the tax should be revised to \$3,360.00 using the actual sales price of \$48,000.00.

6. Petitioner argued that possession of the boat was transferred outside New York State and therefore the transaction was not subject to sales tax. He further argued that he was a nonresident of New York at the time of purchase of the boat and as such the subsequent use of the boat within the state was not subject to use tax.

With respect to the cancellation of penalty and interest, petitioner relied on Regulation 536.1(b)(5) which provides that grounds for reasonable cause may include the following:

"pending petition to Tax Commission or formal hearing proceedings involving a question or issue affecting the computation of tax for the year, quarter, month or other period of delinquency."

CONCLUSIONS OF LAW

A. That section 7-a(A) of the State Law provides that the jurisdiction of New York State extends to and over, and is exercisable with respect to waters offshore from the coasts of New York as follows: (1) those portions of the Great Lakes lying within the territorial limits of this state.

The sales tax is a "destination tax", that is the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate [20 NYCRR 525.2(a)(3)].

B. That the seller of the boat transferred possession to petitioner in New York territorial waters off of the City of Oswego. Accordingly, the boat was delivered within New York State and was subject to the sales tax imposed under section 1105(a) of the Tax Law. The applicable tax jurisdiction was the City of Oswego (7%).

C. That since delivery of the boat took place in New York State, issue II is moot.

D. That petitioner's reliance on Regulation 536.1(b)(5) for cancellation of penalty and interest is misplaced. Petitioner failed to establish that its failure to pay the sales tax was due to reasonable cause and was not due to willful neglect.

E. That in accordance with Finding of Fact "5", the tax due is reduced to \$3,360.00.

F. That the petition of Dirk J. Oudemool Inc. is granted to the extent indicated in Conclusion of "E"; the Audit Division is hereby directed to modify

the Notice of Determination and Demand for Payment of sales and Use Taxes Due issued December 13, 1982; and that, except was so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985

Roderick A. Chen
PRESIDENT

Francis Q. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER

P 153 387 570

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014 PS Form 3800, Feb. 1982	Sent to	<i>Mark J. Oudeemel</i>	
	Street and No.	<i>Williamston Tower</i>	
	P.O. State and ZIP Code	<i>P.O. Box 2306</i>	
	Postage	<i>Williamston DE 19899</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			

P 153 387 571

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014 PS Form 3800, Feb. 1982	Sent to	<i>Bruce B. Rasing</i>	
	Street and No.	<i>108 W. Jefferson St</i>	
	P.O. State and ZIP Code	<i>Spencer NY 13212</i>	
	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			