

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ray Barret :
Arret Company, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law :
for the Period 5/31/81. _____

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 19th day of June, 1986, he/she served the within notice of Decision by certified mail upon Ray Barret, Arret Company, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ray Barret
Arret Company, Inc.
119 Ralsey Rd.
Stamford, CT 06902

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
19th day of June, 1986.

Janet M Snay

Daniel J. Ravello
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
Ray Barret :
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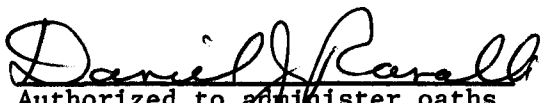
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 19th day of June, 1986, he served the within notice of Decision by certified mail upon Jacob Wiesan, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

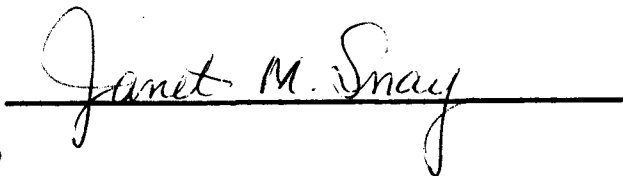
Jacob Wiesan
M.F. Greene, P.C.
372 Fifth Ave.
New York, NY 10018

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
19th day of June, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



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

June 19, 1986

Ray Barret
Arret Company, Inc.
119 Ralsey Rd.
Stamford, CT 06902

Dear Mr. Barret:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Jacob Wiesan
M.F. Greene, P.C.
372 Fifth Ave.
New York, NY 10018

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	DECISION
RAY BARRETT	:	
ARRETT COMPANY, INC.	:	
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 5/31/81.	:	

Petitioner, Ray Barrett, Arrett Company, Inc., 119 Ralsey Road, Stamford, Connecticut 06902, 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 May 31, 1981 (File No. 40970).

A hearing was held before Sandra F. Heck, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 26, 1986 at 2:45 p.m. Petitioner appeared by Mark F. Greene, P.C. (Jacob Wiesan). The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUES

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

II. Whether sales and use tax on the purchase of a boat was legally due and paid to the State of Connecticut without right to refund, thereby invoking the reciprocal provisions of section 1118(7)(a) of the Tax Law.

FINDINGS OF FACT

1. On August 25, 1982, the Audit Division issued to petitioner, Ray Barrett, Arrett Company, Inc., a Notice of Determination and Demand for

Payment of Sales and Use Taxes Due, assessing sales and use taxes under Articles 28 and 29 of the Tax Law for the period ending May 31, 1981 in the amount of \$5,696.67, together with penalties in the amount of \$911.47 and interest in the amount of \$740.57, for a total of \$7,348.71.

2. Petitioner, Ray Barrett, is the president of Arrett Company, Inc., a Delaware corporation formed for the purpose of owning and documenting the boat at issue herein. Mr. Barrett has been a resident of the State of Connecticut since October, 1971.

3. As evidenced by the bill of sale dated March 28, 1981, petitioner purchased a 1981, thirty-three foot Carver boat named "Station Break", Hull No. CDR 390460281-81, from Surfside 3 Marina Inc. (hereinafter "Surfside") in Lindenhurst, New York. The boat was documented by the United States Coast Guard, official no. 639982, on December 11, 1981 by petitioner.

4. Prior to the petitioner taking possession of the boat, Surfside prepared the boat for delivery. This preparation, or "make ready time" involves assembly of the boat, installation of the engines and preparation of the engines for operation. Following the "make ready time", the boat is taken out for 15 to 30 minutes to ensure that it is running properly. Petitioner specified that the boat be delivered to him in Connecticut to insure that the boat was operating properly and had 5 hours of running time to detect any problems.

5. Petitioner was informed, during the negotiations over the purchase price of the boat, that Surfside did not provide delivery service to Connecticut. Petitioner then contracted with a Mr. William F. Miller of

Bayside, New York, to motor the boat from New York to Connecticut and to deliver the boat to petitioner in Stamford, Connecticut.

6. On May 14, 1981, Mr. Miller delivered the boat to petitioner in Stamford, Connecticut. The keys had previously been given to petitioner at Surfside in New York. The balance of the purchase price was not paid by petitioner until the boat was delivered in good working order in Connecticut.

7. On May 24, 1983, petitioner registered the boat with the State of Connecticut and paid \$6,075.00 of sales and use tax to Connecticut.

CONCLUSIONS OF LAW

A. That section 525.2(a)(3) of 20 NYCRR provides, in pertinent part, as follows:

"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."

B. That possession of the boat was transferred by the vendor to the purchaser's designee in New York State. The fact that petitioner's acceptance of the boat was conditioned on the completion of a successful shakedown cruise from New York to Connecticut is not determinative for the purposes of sales tax liability. Section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property, except as otherwise provided in Article 28. The term sale is defined by section 1101(b)(5) of the Tax Law as "[a]ny transfer of title or possession or both..., conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor...,". The statute specifically provides that a sale occurs when either title or possession is transferred. In a conditional sale transaction, the sale, for tax purposes, occurs upon delivery not upon final payment or completion of

contract (see Matter of N.Y. World Telegram Corp., v. McGoldrick, 298 N.Y. 11 [1948]; Matter of Jacques Francais Rare Violins, Inc., State Tax Commission, October 5, 1984; 20 NYCRR 525.2[a][2]). Therefore, for the purpose of determining sales tax liability, petitioner's boat was delivered in New York State and is subject to sales tax under Articles 28 and 29 of the Tax Law, unless otherwise exempted.

C. That section 1118(7)(a) of the Tax Law provides an exemption from compensating use tax liability in respect to use of property on which sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state which other state allows a corresponding exemption for sales and use tax paid to New York State. Because the issue in this case involves the imposition of sales tax, rather than compensating use tax, the reciprocity provision of section 1118(7)(a) of the Tax Law is inapplicable.

D. That section 1145 of the Tax Law provides for the imposition of penalties for failure to file a return or to pay over any tax required by Article 28 of the Tax Law. If, however, the Tax Commission determines that such failure was due to reasonable cause and not due to willful neglect, it may remit all such penalty. Petitioner's failure to pay sales tax was due to reasonable cause and not willful neglect, in that failure to pay was due to good faith belief that delivery of the boat had been effected in the State of Connecticut, as evidenced by the payment of sales and use tax to that jurisdiction.

E. That the petition of Ray Barrett and Arrett Company, Inc. is granted to the extent indicated in Conclusion of Law "D"; the Audit Division

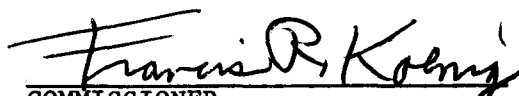
is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 25, 1982; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to Ray Barnett	
Street and No. Company, etc. 119 Ralsey Rd.	
P.O., State and ZIP Code Stamford, CT 06902	
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	

P 319 372 788

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to Jacob Wiesen	
Street and No. Company, etc. Greene, P.C. 372 Fifth Ave.	
P.O., State and ZIP Code New York, N.Y. 10018	
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	