

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

Paul Friedman :  
Wanderlust, 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 5/31/76. :

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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 17th day of January, 1986, he served the within notice of Decision by certified mail upon Paul Friedman, Wanderlust, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Friedman  
Wanderlust, Inc.  
1229 East 56th Street  
Brooklyn, NY 11234

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  
17th day of January, 1986.

David Parchuck

Ann W. O'Hagan  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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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 17th day of January, 1986, he served the within notice of Decision by certified mail upon Lawrence S. Berkowitz, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence S. Berkowitz  
4 Briarcliff Road  
Spring Valley, NY 10977

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  
17th day of January, 1986.

David Parchuck

Annex P. H. H. H.

Authorized to administer oaths  
pursuant to Tax Law section 174

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

January 17, 1986

Paul Friedman  
Wanderlust, Inc.  
1229 East 56th Street  
Brooklyn, NY 11234

Dear Mr. Friedman:

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  
Lawrence S. Berkowitz  
4 Briarcliff Road  
Spring Valley, NY 10977  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
PAUL FRIEDMAN,	:	DECISION
WANDERLUST, 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 May 31, 1976.	:	

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Petitioner, Paul Friedman, Wanderlust, Inc., 1229 East 56th Street, Brooklyn, New York 11234, 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, 1976 (File No. 44580).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 5, 1985 at 1:15 P.M. Petitioner appeared by Lawrence S. Berkowitz, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined that a boat purchased by petitioner on April 23, 1976 was subject to sales and/or use tax.

II. Whether any tax found due as the result of this decision is to be computed at the New York City rate of 8 percent or the Rockland County rate of 4 percent.

FINDINGS OF FACT

1. Petitioner, Wanderlust, Inc., was incorporated in the State of Delaware sometime in the early part of 1976. Paul Friedman was President of Wanderlust, Inc. and its sole stockholder.

Wanderlust, Inc. was formed for the purpose of owning and operating a boat. It was alleged by Mr. Friedman that said corporation was also formed for the purpose of developing sales in the area of freight forwarding and customer brokerage. The boat was to be used as a "floating office" along the eastern seaboard. Wanderlust, Inc. has never engaged in any sales activities and said corporation was described as "inactive". The boat is the only asset owned by Wanderlust, Inc. Wanderlust, Inc. does not maintain an office in the State of Delaware; however, it does have a mailing address within said State.

2. On April 23, 1976, Wanderlust, Inc. purchased a boat for \$100,000.00 from Higgs Marine Service, Inc. (hereinafter "Higgs") located in Bronx, New York. The sales invoice identified the boat as a "Grand Banks '42' powered with Twin Ammarine 404 Cu. In. Diesel Engines. Hull #473. Vessel and equipment as per contract dated 3/22/76." The sum of \$5,000.00 was paid on account on March 22, 1976, and the balance due of \$95,000.00 was paid on April 23, 1976, the date petitioner took delivery of the vessel. No sales tax was paid on the purchase price of the vessel.

3. On March 7, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against "Paul Friedman, Wanderlust, Inc." for taxes due of \$8,000.00, plus simple interest of \$5,040.00, for a total amount due of \$13,040.00. The tax due asserted in the aforementioned Notice was computed by multiplying the purchase price of the vessel described in Finding of Fact "2", supra, by the New York City tax rate of 8 percent.

The Audit Division took the position that petitioner was a resident of New York for purposes of the Sales and Use Tax Law and that the mooring of the vessel in New York constituted a taxable use.

4. On April 23, 1976, Paul Friedman boarded the vessel in question at Higgs facilities in Bronx, New York. An employee of Higgs navigated the vessel out of New York waters and up the coast until said vessel was situated off the shore of the State of Connecticut. At this point, the employee of Higgs shut the engines off and handed the keys to Mr. Friedman. Mr. Friedman tendered a check to said employee in the amount of \$95,000.00. Mr. Friedman thereafter navigated the vessel back into New York waters and moored said vessel at a marina located in Brooklyn, New York. Mr. Friedman maintained a personal residence in Brooklyn, New York and was a resident of New York. In a letter dated June 7, 1985, the Audit Division conceded that "...actual delivery (of the vessel) took place outside the jurisdiction of New York."

5. Mr. Friedman, at the time he took delivery of the vessel in question, was residing with his daughter and son-in-law in Spring Valley, New York. Mr. Friedman's spouse had passed away just prior to the purchase of the vessel and, although he still maintained a residence in Brooklyn, New York, Mr. Friedman was living in Spring Valley, New York. Petitioner contends that if the vessel is determined to be subject to tax, that the tax rate in effect in Spring Valley, New York (4 percent) should be used to compute the tax due.

#### CONCLUSIONS OF LAW

A. That 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)].

The seller of the vessel transferred possession to petitioner outside New York State. Accordingly, the transaction was not subject to the tax imposed under section 1105(a) of the Tax Law.

B. That section 1101(b)(7) of the Tax Law defines the term "use" as the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to the receiving, storage or any keeping or retention for any length of time.

Section 1118(2) of the Tax Law provides an exemption from the imposition of use tax, "In respect to use of property purchased by the user while a nonresident of this state... A person while engaged in any manner in carrying on in this state any employment, trade, business or profession, shall not be deemed a nonresident with respect to the use in this state of property in such employment, trade, business or profession."

C. That a corporation is considered to be engaged in "carrying on a business" within New York State if it carries on in New York activities preparatory to the purposes for which it was formed. It is clear that Wanderlust, Inc. was formed for the sole purpose of owning and operating a vessel. The activities of Paul Friedman performed prior to the purchase of said vessel constituted such preparatory activities (e.g. entering into a contract dated March 22, 1976 for the purchase of the vessel and arranging for the payment, mooring and insurance for said vessel). Accordingly, petitioner is deemed a resident of New York at the time of purchase.

The subsequent mooring of the boat at a marina in Brooklyn, New York constituted "use" within this state in accordance with section 1101(b)(7) of the Tax Law and was therefore subject to the tax imposed under section 1110 of the Tax Law.


D. That the vessel in question was moored in Brooklyn, New York and Paul Friedman also maintained a residence in Brooklyn, New York. Accordingly, the Audit Division properly imposed tax at the rate of eight percent.

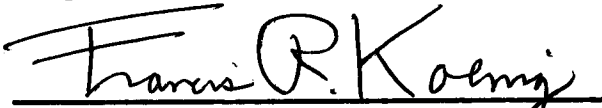
E. That the petition of Paul Friedman, Wanderlust, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 7, 1983 is sustained, together with such additional interest as may be lawfully due and owing.

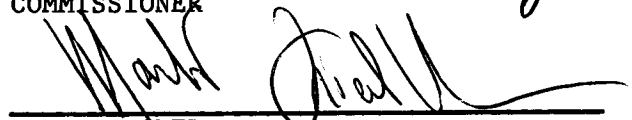
DATED: Albany, New York

STATE TAX COMMISSION

JAN 17 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



P 684 313 133

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

Sent to	<i>Samuel S. Belavsky</i>
Street and No.	<i>2 Bravely Rd.</i>
P.O., State and ZIP Code	<i>Spring Valley 74109 TX</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	

P 684 313 132

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

Sent to	<i>Paul Friedman</i>
Street and No.	<i>Windsor Inc</i>
P.O., State and ZIP Code	<i>1229 E. 56th St</i>
Postage	<i>Brooklyn 11223</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	