

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Alfred J. Fasolino :

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 Ended 2/28/79. :

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 12th day of November, 1986, he/she served the within notice of Decision by certified mail upon Alfred J. Fasolino the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alfred J. Fasolino
109 Danbury Rd., Suite 3
P.O. Box 329
Ridgefield, CT 06877

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
12th day of November, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Alfred J. Fasolino :

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 Ended 2/28/79. :
_____ :

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 12th day of November, 1986, he served the within notice of Decision by certified mail upon Jerald Rosenbloom, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Jerald Rosenbloom
130 Cedar Street
New York, NY 10006

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
12th day of November, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



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

November 12, 1986

Alfred J. Fasolino
109 Danbury Rd., Suite 3
P.O. Box 329
Ridgefield, CT 06877

Dear Mr. Fasolino:

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:
Jerald Rosenbloom
130 Cedar Street
New York, NY 10006

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ALFRED J. FASOLINO : 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 February 28, :
1979.

Petitioner, Alfred J. Fasolino, 109 Danbury Road, Suite 3, P.O. Box 329, Ridgefield, Connecticut 06877, 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 February 28, 1979 (File No. 47330).

A hearing was held before Sandra Heck, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 14, 1986 at 9:50 A.M., with all briefs to be submitted by August 8, 1986. Petitioner appeared by Rosenbloom and Hofflich (Jerald Rosenbloom, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined that a boat purchased by petitioner, as an agent for a corporation, was subject to compensating use tax.

FINDINGS OF FACT

1. On August 22, 1983, the Audit Division issued against petitioner, Alfred Fasolino, and Calm Seas Ltd. a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing sales and use taxes in the amount of \$4,564.00 plus penalty and interest for the period ended February 28, 1979.

The assessment represented compensating use tax allegedly due on the use within the state of a vessel, The Last Frontier, purchased outside the state.

2. Calm Seas Ltd. did not protest the assessment.

3. Calm Seas Ltd., a Delaware corporation, purchased a 37 foot yacht from Willis Marine Center, Inc. ("Willis") of Huntington, New York for a purchase price of \$65,200.00. The Bill of Sale and Agreement between the parties was signed by Alfred J. Fasolino, acting for Calm Seas Ltd.

4. Sometime in April 1980, Willis delivered The Last Frontier to Calm Seas Ltd. in Stamford, Connecticut, where Mr. Fasolino, acting for the corporation, took possession of the vessel.

5. From January 20, 1979, when the purchase agreement was signed, until possession was transferred in Connecticut, The Last Frontier was located at Willis's place of business where it underwent certain work agreed to by the parties as a condition of sale.

6. The Last Frontier was moored in Old Greenwich, Connecticut in the calendar year 1979. It is not known where it was moored or used thereafter.

7. Mr. Fasolino was a resident of Connecticut. He was not an officer or stockholder of Calm Seas Ltd. Information supplied to the Audit Division by Willis showed a New York State address for Mr. Fasolino.

CONCLUSIONS OF LAW

A. That section 1110 of the Tax Law imposes a compensating use tax on every person "for the use within this state...of any tangible personal property purchased at retail."

B. That Tax Law section 1101(b)(7) defines the term "use" as the exercise of any right or power over tangible personal property by the purchaser of that property

and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time.

C. That there is no indication that The Last Frontier was ever present in New York State after the seller transferred possession to petitioner in Connecticut. Since there has been no use within this State, no compensating use tax may be imposed. Whether or not petitioner was a resident or did business in New York State is irrelevant, inasmuch as the vessel was not used within the State.

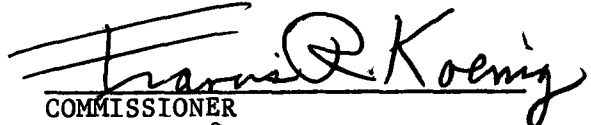
D. That the petition of Alfred Fasolino is granted, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against him and dated August 22, 1983 is cancelled.

DATED: Albany, New York

NOV 12 1986

STATE TAX COMMISSION


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 Jerab Rosenbloom	
Street and No. 130 Cedar St.	
P.O. State and ZIP Code N.Y. N.Y. 10006	
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 319 372 973

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Street and No. 109 Danbury Rd. Suite 3	
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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	