

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Norman Wiener :

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 6/1/80-8/31/80.

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 9th day of June, 1987, he/she served the within notice of decision by certified mail upon Norman Wiener the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman Wiener
860 Greenbelt Parkway
Holbrook, NY 11741

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
9th day of June, 1987.

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

Janet M. Snay

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

June 9, 1987

Norman Wiener
860 Greenbelt Parkway
Holbrook, NY 11741

Dear Mr. Wiener:

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

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| NORMAN WIENER | : | 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 June 1, 1980 | : | |
| through August 31, 1980. | : | |

Petitioner, Norman Wiener, 860 Greenbelt Parkway, Holbrook, New York 11741, 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 June 1, 1980 through August 31, 1980 (File No. 55445).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 14, 1987 at 1:15 P.M., with all briefs to be filed by January 28, 1987. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUE

Whether petitioner is liable for tax on the purchase of a power boat.

FINDINGS OF FACT

1. On May 21, 1984, the Audit Division issued to petitioner, Norman Wiener, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing a tax due of \$1,750.00, plus interest of \$705.00, for a total amount due of \$2,455.00 for the period June 1, 1980 through August 31, 1980. The tax

due was based on the purchase by petitioner of a 1976 42-foot Silverton power boat identified as You and I for \$25,700.00.¹

2. On June 4, 1984, petitioner timely filed a petition for a hearing to review the notice of determination.

3. In or about July 1980, petitioner, a resident of New York residing at 860 Greenbelt Parkway, Holbrook, New York, contemplated purchasing a power boat. Petitioner was advised by unnamed individuals that if he purchased a boat through a Delaware corporation and documented it with the United States Coast Guard, versus registering it with New York, that New York sales tax could be avoided. Petitioner was led to believe that if he forfeited his right to use the boat during a national disaster, that the purchase of the boat would not be subject to tax. Because he thought he could achieve substantial sales tax savings, petitioner was able to purchase You and I.

4. On July 9, 1980, petitioner executed an agreement for the purchase of You and I from Charles Chlanda of 1400 Gardiner Drive, Bay Shore, New York for \$25,700.00 to be paid at the time of closing. At or about the same time, petitioner formed a Delaware corporation, Close Encounters Marine, Inc., presumably to own You and I. Petitioner was the sole officer and shareholder of said corporation, which maintained offices at 508 Windley Road, Wilmington, Delaware. It is not known whether petitioner or the corporation purchased the vessel, but, subsequent to its purchase, the boat was documented with the United States Coast Guard in the name of the corporation. At the time of transfer, the boat was located in Bay Shore, New York.

1 The tax due was actually \$1,799.00.

5. You and I was used by petitioner both within and without New York State during 1980 and 1981, and was eventually sold in September 1981.

6. Petitioner contends that sales tax was not paid at the time of purchase because the boat was documented with the United States Coast Guard, through a Delaware corporation, and, therefore, its purchase was not subject to tax.

CONCLUSIONS OF LAW

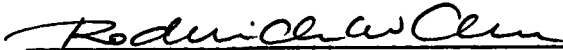
A. That section 1105(a) of the Tax Law imposes a tax upon the receipts from every retail sale of tangible personal property, except as otherwise provided in Article 28. The purchase by petitioner of the boat You and I in Bay Shore, New York was a retail sale subject to tax pursuant to section 1105(a) of the Tax Law. Petitioner has failed to sustain the burden of proof required to show that he was not liable for said tax or that said purchase was otherwise exempt from tax.

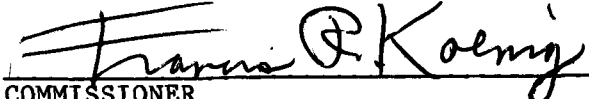
B. That the petition of Norman Wiener is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 21, 1984 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 09 1987


PRESIDENT


COMMISSIONER


COMMISSIONER