

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**STAN GROMAN** : ORDER  
 : DTA NO. 824274  
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 February 9, 2004. :

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Petitioner, Stan Groman, 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 February 9, 2004.

A determination in this matter was issued on September 12, 2013 by Winifred M. Maloney, Administrative Law Judge. On October 23, 2013, petitioner, appearing pro se, filed a motion to reopen the record pursuant to 20 NYCRR 3000.16. The Division of Taxation, appearing by Amanda Hiller, Esq. (Robert Maslyn, Esq., of counsel) filed a response in opposition to the motion on November 27, 2013. Petitioner filed a reply to the Division of Taxation's response on December 9, 2013, which date began the 90-day period for the issuance of this order.<sup>1</sup> Based upon the motion papers and all the pleadings and proceedings had herein, Winifred M. Maloney, Administrative Law Judge, renders the following order.

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<sup>1</sup> By letter dated December 27, 2013, the Division of Taxation objected to any consideration of petitioner's reply because it was filed without permission as required under the Rules of Practice and Procedure (*see* 20 NYCRR 3000.5[b]). Considering the absence of any prejudice to the Division, however, and considering that the Rules are to be liberally construed (*see* 20 NYCRR 3000.0[c]), the objection is rejected.

***ISSUE***

Whether the determination should be vacated and new evidence accepted, which petitioner contends will produce a different result.

***FINDINGS OF FACT***

1. As a result of a desk audit, the Division of Taxation (Division) issued to petitioner, Stan Groman, a Notice of Determination that assessed tax, interest and penalty on his February 9, 2004 purchase of a vessel.

2. Petitioner filed a petition for revision of a determination under Articles 28 and 29 of the Tax Law for the period February 9, 2004. A hearing in this matter was held on October 23, 2012, and on September 12, 2013 the administrative law judge issued a determination in the matter. The determination held that the purchase occurred and possession of the subject vessel was transferred to petitioner in Florida at some point in February 2004, and that the subject vessel first entered New York State on May 1, 2005. It was also found that the subject vessel was not a commercial vessel engaged in interstate or foreign commerce and was not exempt from compensating use tax. Since petitioner failed to submit an appraisal or any professional valuation of the vessel based upon its entry date of May 1, 2005, a valuation prepared by the Division was determined to be reasonable and was accepted as the current value of the subject vessel on its first use in New York State. The Division was directed to recompute the tax based upon the current value of the vessel at its first use in New York State on May 1, 2005. In addition, the penalty for failing to timely file a return or timely pay the tax imposed by Articles 28 and 29 of the Tax Law was sustained because petitioner failed to report the use of the boat regardless of whether tax was due, and he also failed to retain and present any records listing his charters and detailing the character of the charters and the amounts paid (receipts) for such

charters, to support his claim of exemption as a commercial vessel engaged in interstate or foreign commerce.

3. On October 23, 2013, petitioner filed a motion to vacate the determination and to reopen the record for newly discovered evidence, with a hearing. Petitioner claims that as a result of a fire at his residence in December 2010, documents were damaged and mixed up. He further claims that he only recently came across several lost fire damaged files and that he has “newly discovered” evidence including financial records that can now better prove the percentage of chartering, and has now been able to identify witnesses who can accurately attest to the vessel’s fair market value prior to the vessel entering New York State. Attached to petitioner’s motion was a one-page document, a sworn Statement As To Full Cost Of Repair Or Replacement Under The Replacement Cost Coverage submitted to State Farm Fire & Casualty Insurance Company by petitioner and Mrs. Groman for the December 1, 2010 loss at their Sandy Creek, New York, dwelling. Neither a description of the “newly discovered” documents nor the documents were submitted with the motion. Nor were the identities of the “newly discovered” witnesses disclosed in the motion.

4. On November 27, 2013, the Division filed the affirmation of Robert A. Maslyn, Esq., in opposition to petitioner’s motion. Mr. Maslyn contends that petitioner’s motion is without basis in law or fact.

5. On December 9, 2013, petitioner submitted a reply letter, in which he identified the Freehold, New Jersey, forensic engineering company that was consulted regarding the engine damage sustained by the subject vessel off the coast of New Jersey in August 2004. Petitioner asserts that he is still “attempting to gather information from the forensic engineer.” He further asserts that the relevant customer charter files have been located and will be available prior to a

future hearing. The only evidence attached to petitioner's reply letter is a copy of a one-page letter dated March 22, 2005, from petitioner to Howard and Joan Lang, the parties who sold the vessel to petitioner.

### ***CONCLUSIONS OF LAW***

A. Section 3000.16 of the Tax Appeals Tribunal's Rules of Practice and Procedure provides for motions to reopen the record or for reargument and states, in pertinent part, that:

(a) Determinations. An administrative law judge may, upon motion of a party, issue an order vacating a determination rendered by such administrative law judge upon the grounds of:

(1) newly discovered evidence which, if introduced into the record, would probably have produced a different result and which could not have been discovered with the exercise of reasonable diligence in time to be offered into the record of the proceeding, or

(2) fraud, misrepresentation, or other misconduct of an opposing party.

(b) Procedure. A motion to reopen the record or for reargument, with or without a new hearing, shall be made to the administrative law judge who rendered the determination within thirty days after the determination has been served.

B. The determination in this matter was issued on September 12, 2013, and it is this date which commenced the 30-day period within which a motion to reopen the record had to have been filed. Thirty days after the September 12, 2013 determination issuance date was October 15, 2013.<sup>2</sup> Petitioner's motion to reopen the record was filed on October 23, 2013, or eight days late (20 NYCRR 3000.16[b]).

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<sup>2</sup> The 30<sup>th</sup> day fell on Saturday, October 12, 2013, Monday, October 14, 2013 was Columbus Day, and the next business day was Tuesday, October 15, 2013 (20 NYCRR 3000.1[q]; General Construction Law § 25-a; *see Matter of American Express Co.*, Tax Appeals Tribunal, July 3, 1991; *Matter of Bur-Sul, Ltd.*, Tax Appeals Tribunal, February 13, 1992).

C. Petitioner's motion to reopen the record in this matter, dated October 23, 2013, is denied.

DATED: Albany, New York  
March 6, 2014

/s/ Winifred M. Maloney  
ADMINISTRATIVE LAW JUDGE