

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-87(35)S
Sales Tax
September 25, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S870605A

On June 5, 1987, a Petition for Advisory Opinion was received from Ameire Ltd., 134 Market Street, Lewes, Delaware and Marvin Arnold Pollack, 24 West Wood Road, Great Neck, New York 11020.

Petitioner Ameire Ltd. (Ameire) was incorporated in the State of Delaware and maintains its principal business address at Lewes, Delaware. Petitioner Marvin Arnold Pollack (Pollack) is a resident of New York State and the sole shareholder and officer of Ameire.

Ameire purchased a boat in Florida at a cost of \$227,574. The boat was delivered by the seller to Ameire in Lewes, Delaware. No sales or compensating use tax was paid to the State of Florida. The State of Delaware does not have a sales or compensating use tax. Ameire intends to lease the boat to its sole shareholder on an annual renewable lease basis with a twelve month navigation period.

It is the intention of the parties that the boat navigate the eastern seacoast of the United States between Florida and Massachusetts spending the substantial parts of the months of April and May at Lewes, Delaware; May and June in New Jersey; July and August in New York; September and October in New Jersey; October, November and December in Delaware and January through March in Florida waters on a cruising permit (passing through the waters of the various states on its trips up and down the eastern seacoast).

The issues raised are (I) whether New York sales or compensating use tax will be imposed on the boat; (II) on what basis the tax would be computed; (III) whether Ameire must qualify in New York State in order to collect and pay the appropriate tax; (IV) whether Ameire would be subject to franchise tax in New York State and (V) whether Pollack would be subject to personal income tax in New York State.

Initially, it is noted that a number of New York State residents have attempted to evade payment of New York State sales or compensating use tax on their purchases of boats by forming sham Delaware corporations. It is not possible to determine from the information supplied by Petitioners whether Ameire is such a sham corporation. Accordingly the issues raised in the petition for advisory opinion will be addressed in the alternative and Petitioners' tax liability will be ultimately determined by the actual facts of this case.

If it is ultimately determined that Ameire is a sham corporation without economic substance, formed solely for purposes of tax evasion, the existence of the sham will be disregarded and the boat will be deemed owned by Pollack. When the boat is used within New York State by Pollack, he will become subject to the compensating use tax imposed by section 1110 of the Tax Law. Section 1110 of the Tax Law imposes a use tax upon any tangible personal property used within this state, except

to the extent that such property has already been subject to sales tax under Article 28 of the Tax Law. Section 1111(b) of the Tax Law provides that "[t]angible personal property which has been purchased by a resident of New York State outside of this state for use outside of this state and subsequently becomes subject to the compensating use tax imposed under this article, shall be taxed on the basis of the purchase price of such property " However, if a taxpayer shows that the property was used outside of New York for more than six months prior to its use within New York, the property is taxable based upon its current market value at the time of first use in the state, not to exceed its cost.

Accordingly, under such circumstances, Pollack would be subject to the compensating use tax when he uses the boat within New York State. The tax would be computed based upon the full purchase price of the boat or upon the current market value of the boat depending on the length of time of prior use outside of the state.

On the otherhand, if it is ultimately determined that Ameire is not a sham corporation, the use of the boat within New York State would not be subject to the use tax if Petitioners can establish that the rental paid to Ameire by Pollack is reasonable in view of prevailing market rental prices. However, the rentals paid to Ameire by Pollack for lease of the boat within New York State would be subject to the sales tax imposed by section 1105(a) of the Tax Law upon rentals of tangible personal property. As a vendor of tangible personal property, Ameire is required by section 1134 of the Tax Law to register for sales tax purposes and to collect and remit sales tax on its taxable rentals.

In addition as a corporation owning property within the state and leasing it to others, Ameire would be subject to the corporate franchise tax imposed upon business corporations under Article 9-A of the Tax Law.

Furthermore, it is noted that as a resident of New York State, Pollack would be subject to the personal income tax imposed under Article 22 of the Tax Law to the extent that his use of the boat (within and without New York State) is deemed either a constructive dividend or additional wages from Ameire.

Finally, it is noted that Petitioners have requested the Tax Commission to provide guidance and advice regarding how to draft a plan which will enable Petitioners to avoid paying sales tax on the value of the boat. It is not within the scope of advisory opinions to suggest methods of tax avoidance. Accordingly, this portion of Petitioners' request is denied.

DATED: September 25, 1987

FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.