

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petitions	:	
	:	
of	:	
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MURPHY HEATING SERVICE, INC.,	:	DECISION
ANTHONY MANCINI AND GRAZIANO MANCINI	:	
for Revision of Determinations or for Refunds	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period December 1, 1976	:	
through August 31, 1980.	:	

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Petitioners, Murphy Heating Service, Inc., Anthony Mancini and Graziano Mancini, c/o General Utilities, 109 Audrey Avenue, Oyster Bay, New York 11771, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1976 through August 31, 1980 (File Nos. 31954, 32114 and 32115).

A formal 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 December 13, 1983 at 10:00 A.M., with all briefs to be submitted by February 23, 1984. Petitioners appeared by Marino, Bernstein & La Marca (Anthony J. La Marca, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Michael Gitter, Esq., of counsel).

ISSUES

I. Whether the audit method utilized in the determination of sales and use taxes due from petitioner Murphy Heating Service, Inc. was proper and correct.

II. Whether petitioners Anthony Mancini and Graziano Mancini were persons required to collect tax on behalf of Murphy Heating Service, Inc. and thus, personally liable for taxes unpaid by the corporation.

III. Whether the tax assessed on the transfer of motor vehicles to Combined Trucking Corp. was correctly determined.

IV. Whether the sale of the accounts of Murphy Heating Service, Inc. constitutes the sale of a taxable information service.

FINDINGS OF FACT

1. On November 20, 1980, as the result of an audit, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against petitioner Murphy Heating Service, Inc. that asserted a tax due of \$75,494.12 plus interest for the period December 1, 1976 through August 31, 1980.

2. On November 20, 1980, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against petitioners, Anthony Mancini and Graziano Mancini, as officers of Murphy Heating Service, Inc., which asserted a tax due of \$53,178.68 plus interest for the period December 1, 1976 through August 31, 1980.

3. The aforesaid notices were timely issued pursuant to a signed consent that extended the period of limitation for assessment of sales and use taxes for the period December 1, 1976 through August 31, 1980 to December 20, 1980.

4. Petitioners timely filed petitions protesting the notices issued against them.

5. For the period under review, petitioner Murphy Heating Service, Inc. sold fuel oil at retail and installed, repaired, serviced and maintained oil burner heating equipment in the counties of Nassau and Suffolk in the State of New York. Petitioner Graziano Mancini, known also as Anthony Mancini, held the office of president of the corporation until approximately September 5, 1980,

at which time the corporate assets were sold to Combined Trucking Corp., now known as General Utilities, Inc.

6. On audit, the auditor examined sales tax returns, workpapers associated with the preparation of said returns, Federal income tax returns, State corporation tax returns, a sales journal, some sales invoices, a purchase journal, some purchase invoices, a general ledger, and some exempt organization certificates and capital improvement certificates.

The auditor's examination of sales records and expense purchases consisted of a statistical sampling of the records for the period June 1, 1978 through May 31, 1979. His test of sales records revealed that 62.41 percent of the sales being claimed as exempt were unsupported by exemption certificates. Application of the error rate percentage to the exempt sales attributable to the audit period resulted in additional taxable sales of \$292,836.00 and tax due of \$18,683.20. The auditor's test of expense purchases revealed that 24.44 percent were subject to additional tax. Application of the margin of error percentage to the total expense purchases resulted in additional purchases subject to use tax of \$266,297.00 and use tax due thereon of \$19,088.02.

The balance of the audit involved a review of the business records maintained in the course of operations over the period December 1, 1976 through August 31, 1980. The auditor found: fuel sales to business customers of \$26,737.00 incorrectly taxed at the residential use rates, which resulted in a tax due of \$405.48; oil and diesel fuel purchases of \$33,508.00 for self use on which no tax had been paid the supplier, which resulted in a tax due of \$2,401.88; material purchases of \$1,690.00 for use in capital improvement work on which no tax had been paid, which resulted in a tax due of \$132.07; fixed assets acquired at a cost of \$9,600.00 on which no tax had been paid, which resulted in a tax

due of \$693.47; and lastly, that business assets of \$487,000.00 sold in the bulk sale of the business to Combined Trucking Corp. were subject to tax, which resulted in a tax due of \$34,090.00.

7. Prior to the audit of the books and records of Murphy Heating Service, Inc., the auditor offered an explanation of the Division's audit procedures including the statistical sampling test. At that time, the parties that were involved agreed to a test of the most current year due to the accessibility of these records and unavailability of past records already placed in storage, plus the loss of some past records. Not until the completion of the test did the petitioners protest that the test period was not representative of the other years under review. At the time of the protest, the auditor offered to extend the test period but the offer was rejected. No documentation was offered into evidence to show what effect, if any, an extension would have had upon the audit results.

8. Among the assets sold in the bulk sale to Combined Trucking Corp. were the accounts of Murphy Heating Service, Inc. and its fleet of motor vehicles. In accordance with the contract of sale made on August 22, 1980, the accounts were sold for the sum of \$337,500.00 and the motor vehicles for \$140,000.00. Miscellaneous equipment was also sold for \$10,000.00; however, said amount is not at issue. It was upon these amounts that the Audit Division computed bulk sales tax of \$23,590.00, \$9,800.00 and \$700.00, respectively.

9. At the hearing, five cancelled checks which Combined Trucking Corp. had drawn payable to the Sales Tax Bureau were introduced into evidence and the Audit Division conceded that the checks represented a partial payment of the tax due on eleven of the motor vehicles acquired from Murphy Heating Service, Inc. The five checks, totalling \$6,055.00, are scheduled below:

<u>Date Drawn</u>	<u>Check Amount</u>
October 1, 1980	\$1,365.00
November 21, 1980	2,170.00
November 25, 1980	1,400.00
December 8, 1980	770.00
February 9, 1981	350.00

10. Petitioners further argued that the contracted sales price of the motor vehicles had been overstated in the amount of \$40,000.00 due to the inclusion of a lease which would not, on transfer, be subject to sales tax. Petitioners introduced a lease agreement which petitioner Murphy Heating Service, Inc. executed with Mid-Island Ford Truck Sales, Inc. on June 22, 1978 for the 60 month lease of a Ford tank truck (I.D. No. D80DVY65804) at a rental fee of \$957.90 per month, plus tax of \$67.05, for a total payment of \$1,024.95 per month. Petitioners also introduced a Bill of Sale executed on the same date as the contract of sale described in Finding of Fact "8" which provided, in part:

Schedule of the Foregoing Bill of Sale

Vehicles (Schedule C)	\$100,000.00
Transfer of lease on	
1977 Ford Tank Truck, I.D.# D80DVY65804	40,000.00

11. The contract of sale between Murphy Heating Service, Inc. and Combined Trucking Corp. specifically provided, at paragraph 1.C., for the sale of the "(v)ehicles of the Seller, as more fully set forth in Schedule C herein for the sum of One Hundred Forty Thousand (\$140,000.00) Dollars". Schedule C which was annexed to the contract listed among the motor vehicles sold one 1977 Ford with the vehicle identification number D80DVY65804.

12. The auditor, in the audit of the test period June 1, 1978 through May 31, 1979, found no account listed in the chart of accounts for leased vehicles or any other leased equipment. The auditor did, however, find listed

in the capital asset ledger account a truck purchase from Mid-Island Ford on July 1, 1978 in the amount of \$44,544.00. Moreover, the check drafted by Combined Trucking Corp. on October 1, 1980 as set forth in Finding of Fact "9" included the payment of \$1,050.00 tax on a motor vehicle with the identification number D80DVG65804.

13. The Audit Division considered the sale of the accounts of Murphy Heating Service, Inc. as a sale of an information service subject to tax under section 1105(c)(1) of the Tax Law. The sale, as set forth in the August 22, 1980 sales contract, provided for the sale of "(a)ccounts of the Seller...for the sum of Three Hundred Thirty Seven Thousand Five Hundred (\$337,500.00) Dollars".

14. The sale of accounts involved no transfer on hard copy of the accounts of Murphy Heating Service, Inc. The accounts were stored in a computer time share system. Since both corporations subscribed to the same computer time share system, access to the accounts was gained through the entry of the password assigned Murphy Heating Service, Inc. The information requested was then provided to Combined Trucking Corp. on a visual display unit located at the office of Combined Trucking Corp.

15. Mr. Edward M. Minicozzi, president of General Utilities, Inc., testified that the purchase of the accounts of the seller represented the right to do business with the seller's customers to the future exclusion of the seller.

16. No testimony or evidence was offered on the liability of Graziano Mancini for the taxes assessed against him as an officer.

#### CONCLUSIONS OF LAW

A. That prior to the commencement of the audit, the parties thereto were apprised of and agreed in principle with the audit procedures. The audit was

conducted under generally accepted auditing procedures and the resultant tax due arrived at based on said procedures was properly determined in accordance with section 1138(a) of the Tax Law (Surface Line Operators Fraternal Organization, Inc. v. Tully, 85 A.D.2d 858).

B. That petitioner Anthony Mancini a/k/a Graziano Mancini was a person required to collect tax within the meaning and intent of section 1131(1) of the Tax Law and is personally liable for the taxes due from Murphy Heating Service, Inc. pursuant to section 1133(a) of the Tax Law.

C. That the motor vehicles transferred in the bulk sale of the business assets of Murphy Heating Service, Inc. had a total sales price of \$140,000.00 on which the sales tax was correctly applied pursuant to sections 1105(a) and 1101(b)(5) of the Tax Law.

D. That in accordance with Finding of Fact "9", a sales tax in the amount of \$6,055.00 has been paid on the motor vehicles sold in the bulk sale.

E. That the electronic readout or display of information constitutes "duplicating written or printed matter in any manner" [20 NYCRR 527.3(a)(1)] and the accounts of Murphy Heating Service, Inc. represent information (Long Island Reliable Corp. v. Tax Commission, 72 A.D.2d 826; Matter of Dairymens League Co-op Association, Inc. et al, State Tax Commission, December 14, 1984). Accordingly, the sale of accounts is taxable under section 1105(c)(1) of the Tax Law.

F. That the petitions of Murphy Heating Service, Inc., Anthony Mancini and Graziano Mancini are granted to the extent indicated in Conclusion of Law "D". The Audit Division is hereby directed to accordingly modify the notices of determination and demand for payment of sales and use taxes due issued

November 20, 1980 and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

JAN 22 1985

STATE TAX COMMISSION

Roderice av Clew  
PRESIDENT

Francis D. Koenig  
COMMISSIONER

W. J. O'Neil  
COMMISSIONER