

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
RENNA & GUERCIO CARTING, INC. :  
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 June 30, :  
1983. :

DECISION

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In the Matter of the Petition :  
of :  
TWO GUYS SANITATION, INC. :  
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 June 30, :  
1983. :

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Petitioner Renna & Guercio Carting, Inc., 91 Main Street, Kings Park, New York 11754, 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 June 30, 1983 (File No. 48637).

Petitioner Two Guys Sanitation, Inc., P.O. Box 3071, South Farmingdale, New York 11735, 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 June 30, 1983 (File No. 48636).

A consolidated 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 July 25, 1985 at 1:15 P.M. with all briefs to be submitted by August 9,

1985. Petitioners appeared by Milton Shaiman, Esq. The Audit Division appeared by John P. Dugan, Esq. (Joseph Pinto, Esq., of counsel).

#### ISSUE

Whether the sale of "collection stops" is subject to tax as the sale of an information service pursuant to the meaning and intent of section 1105(c)(1) of the Tax Law.

#### FINDINGS OF FACT

1. On October 11, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Renna & Guercio Carting, Inc. ("Renna") for taxes due of \$36,954.06, plus penalty of \$1,847.70 and interest of \$256.09, for a total due of \$39,057.85 for the period ended June 30, 1983.

2. On October 11, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Two Guys Sanitation, Inc. ("Two Guys") for taxes due of \$36,954.06, plus penalty of \$1,847.70 and interest of \$256.09, for a total due of \$39,057.85 for the period ended June 30, 1983.

3. On December 8, 1983, each of the petitioners herein timely filed a petition for a hearing to review the Notice of Determination. The petitioners claim that the sale of "collection stops" represents the sale of goodwill, an intangible asset, and is therefore not subject to the sales tax.

4. It is the position of the Audit Division that the sale of collection stops represents the sale of a taxable information service pursuant to section 1105(c)(1) of the Tax Law.

5. On July 1, 1983, petitioner Renna sold to petitioner Two Guys certain assets of a residential garbage collection business which Renna had operated

in the Town of Babylon. Pursuant to the Asset Purchase Agreement, the assets sold included:

"I. Sale of Assets

A. Vehicles. The Seller agrees to sell to the Buyer, and the Buyer agrees to buy from the Seller, the two (2) vehicles more particularly described in Exhibit A (hereinafter the 'Vehicles'), on an 'as-is, where-is' basis.

B. Collection Stops. The Seller agrees to sell to the Buyer, and the Buyer agrees to buy from the Seller, any and all right, title and interest which the Seller may have in the collection stops that are more specifically described in Exhibit B (hereinafter the 'Collection Stops') in the Town of Babylon."

6. Exhibit B provided the following:

"Good Will, being the right to service all the customers of Renna & Guercio Carting, Inc. in the Town of Babylon that were shown and serviced together with Two Guys Sanitation, Inc. for the trial period."

7. On July 7, 1983, Two Guys mailed a Notification of Sale, Transfer or Assignment in Bulk to the Audit Division advising it of the above sale and the scheduled date of sale of June 30, 1983. Pursuant to the Notification, the selling price of the assets was \$491,625.00 (\$9,500.00 for the vehicles and \$482,125.00 for the collection stops). The Audit Division computed a tax due on the collection stops of \$34,954.06 (\$482,125.00 x 7½%) plus an estimated tax due from Renna for the period June 1 through June 30, 1983 of \$2,000.00 for a total amount due of \$36,954.06. It should be noted that prior to the hearing Renna filed a return for the above period and, therefore, the \$2,000.00 is no longer due from petitioners.

8. The selling price of the estimated 2,000 customers encompassing the collection stops was based on two years gross revenue generated by said stops. The names and addresses of the customers were transferred from Renna to Two Guys as follows: James Armstrong, president of Two Guys, was allowed to ride

the collection vehicles for a two month period prior to the transfer. Mr. Armstrong presumably wrote down whatever information was necessary to enable Two Guys to service the customers after the transfer. The customers were serviced three times per week, therefore, Mr. Armstrong was able to gather considerable information. This is the only manner in which Two Guys received the names and addresses of the collection stops and Renna did not furnish any such information by printed matter or by duplicating written or printed matter in any manner such as by tapes, discs, electronic readouts or displays.

CONCLUSIONS OF LAW

A. That section 1105(c)(1) of the Tax Law provides, in pertinent part, for the imposition of a tax upon the service of the furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner.

B. That, in this case, the sale of collection stops was not the sale of an information service pursuant to the meaning and intent of section 1105(c)(1) of the Tax Law.

C. That the petitions of Renna & Guercio Carting, Inc. and Two Guys Sanitation, Inc. are granted and the notices of determination and demand for payment of sales and use taxes due issued October 11, 1983 are hereby cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER