

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FRED M. SCHILDWACHTER & SONS, INC.	:	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, 1982	:	
through August 31, 1982.	:	

Petitioner, Fred M. Schildwachter & Sons, Inc., 1400 Ferris Place, Bronx, New York 10461, 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, 1982 through August 31, 1982 (File No. 54467).

On May 21, 1985, petitioner, by its representative, Milton A. Chambers, Esq., filed a waiver of hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing record. After due consideration, the Tax Commission renders the following decision.

ISSUE

Whether the receipts from the sale of a customer list in connection with the purchase of the assets of a fuel oil company were subject to tax as the sale of an information service.

FINDINGS OF FACT

1. On May 8, 1984, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Fred M. Schildwachter & Sons, Inc., in the amount of \$107,250.00, plus interest of \$19,144.60, for a total due of \$126,394.60 for the period June 1, 1982 through August 31, 1982.

2. On or about August 24, 1982, Wham Petroleum Corp., a fuel oil dealer, sold in excess of 90 percent of its assets to petitioner. The assets sold consisted of the following:

Equipment	\$ 172,620.00
Goodwill	\$ 140,000.00
Customer Lists	\$1,300,000.00
Restrictive Covenant	\$ 77,500.00
Consulting Agreement	\$ 77,500.00

3. On audit, the Audit Division determined that the equipment consisted of motor vehicles, the sales tax on which would be paid upon registration with the Department of Motor Vehicles. No sales tax was paid on the sale of the customer lists and the May 8, 1984 assessment was based solely on tax due on the sale of said lists for \$1,300,000.00.

4. On March 15, 1985, petitioner remitted a check in the amount of \$137,785.41 representing sales tax due, together with interest thereon through March 19, 1985, thus converting its petition for redetermination to a petition for refund of tax due. Petitioner maintains that the sale of the customer list was not taxable as the sale of tangible personal property or an information service and if the list is considered an information service, it relates only to information that is personal or individual in nature which is not substantially incorporated in reports furnished to other persons.

CONCLUSIONS OF LAW

A. That section 1105(c)(1) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the service of "furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is

personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons...".

B. That a customer list is a business asset the sale of which constitutes "the sale of information and is, therefore, taxable under section 1105 [subd. (c)] of the Tax Law (citation omitted)" (Long Island Reliable Corp. v. Tax Commission, 72 A.D.2d 826). Therefore, the Audit Division properly determined that the sale of the customer list to petitioner was subject to tax.

C. That the petition of Fred M. Schildwachter & Sons, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 8, 1984 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985


PRESIDENT


COMMISSIONER


COMMISSIONER