

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Harold E. & Luester Mertz :  
d/b/a Publishers Clearing House : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 9/1/70 - 8/31/73. :

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Determination by mail upon Harold E. & Luester Mertz, d/b/a Publishers Clearing House, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harold E. & Luester Mertz  
d/b/a Publishers Clearing House  
382 Channel Dr.  
Port Washington, NY 11050

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
17th day of October, 1980.

Deborah A. Barch

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
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Harold E. & Luester Mertz :  
d/b/a Publishers Clearing House : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Determination by mail upon William J. Rennert the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

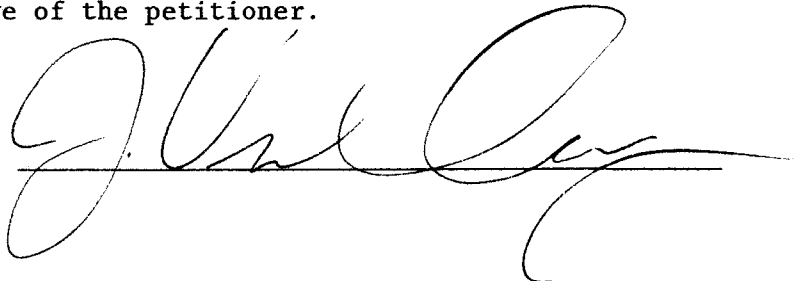
Mr. William J. Rennert  
Wickes, Riddell, Bloomer, Jacobi & McGuire  
59 Madison Ave.  
New York, NY 10038

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
17th day of October, 1980.

Dorothy A. Bank



STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 17, 1980

Harold E. & Luester Mertz  
d/b/a Publishers Clearing House  
382 Channel Dr.  
Port Washington, NY 11050

Dear Mr. & Mrs. Mertz:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
William J. Rennert  
Wickes, Riddell, Bloomer, Jacobi & McGuire  
59 Madison Ave.  
New York, NY 10038  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
HAROLD E. MERTZ and LUESTER MERTZ : DETERMINATION  
d/b/a PUBLISHERS CLEARING HOUSE :  
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 September 1, :  
1970 to August 31, 1973. :

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Applicants, Harold E. Mertz and Luester Mertz, d/b/a Publishers Clearing House, 382 Channel Drive, Port Washington, New York 11050, filed an application 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 September 1, 1970 to August 31, 1973 (File No. 00528).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1976 at 9:15 A.M. Applicant appeared by Wickes, Riddell, Bloomer, Jacobi & McGuire (William J. Rennert, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the amounts paid by Publishers Clearing House to list owners for the use of mailing lists are subject to the sales and use tax.

II. Whether the amounts paid as "commissions" by Publishers Clearing House to L. E. Turner & Company, Inc., a mailing list broker, are subject to the sales and use tax.

III. Whether the sales and use tax allegedly due on a mailing list applies to its entire cost when the list is comprised of names of persons located inside and outside of New York.

MEMORANDUM FOR THE RECORD

TO: THE DIRECTOR, FBI  
FROM: SAC, NEW YORK (100-100000)

SUBJECT: [Illegible]

[Illegible text block containing several paragraphs of a memorandum report]

REMARKS

[Illegible text block containing remarks or additional information]

Very truly yours,

[Illegible text block containing signature and distribution information]

IV. Whether the Sales Tax Bureau correctly determined the amounts paid by Publishers Clearing House to all parties in connection with their purchase of mailing lists.

V. Whether penalty and interest in excess of the minimum rate applicable under section 1145(a) of the Tax Law should be abated.

FINDINGS OF FACT

1. On June 13, 1975, as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants, Harold E. Mertz and Lvester Mertz d/b/a Publishers Clearing House. The Notice issued for the period September 1, 1970 through August 31, 1973 assessed \$304,734.34 in additional tax, plus \$119,278.06 in penalty and interest, for a total of \$424,012.40.

2. Applicants consented to the extension of the period of limitation for assessment of sales and use taxes for the period September 1, 1970 through August 31, 1973 to December 20, 1975.

3. Applicants timely filed an application for a hearing to review the Notice issued on June 13, 1975.

4. Publishers Clearing House is a New York limited partnership with its principal place of business at 382 Channel Drive, Port Washington, New York. The firm is primarily engaged in the business of selling subscriptions for publishers by direct mail solicitation.

5. On audit, the Sales Tax Bureau's auditor determined that Publishers Clearing House owed a tax on mailing lists in the amount of \$298,274.61. This tax was based on the auditor's review of Publishers Clearing House's Federal income tax returns and the determination that \$4,719,619.00 had been paid for mailing lists. The auditor also found that a tax was owed on purchases of furniture and other miscellaneous items. The tax found due on the furniture and

miscellaneous items has been conceded and a payment for the tax amounting to \$6,459.73 plus simple interest has been made.

6. The mailing lists in question consist of names and addresses that have been compiled and stored on magnetic computer tapes.

7. Publishers Clearing House obtained the mailing lists from L. E. Turner & Company, Inc., pursuant to a contract that was entered into on November 30, 1962. The contract appointed L. E. Turner & Company, Inc. as the exclusive mailing list broker for Publishers Clearing House.

8. L. E. Turner & Company, Inc. recommended to Publishers Clearing House mailing lists which were suitable for said applicant's sales campaigns and made arrangements with the list owners for Publishers Clearing House's use.

9. The list owners consisted of mail order businesses selling merchandise or services, and department stores and major manufacturers having credit departments or warranty registrations.

10. Publishers Clearing House received mailing lists on magnetic computer tape at its main office in Port Washington, New York. A computer was employed to read the magnetic tape and to print the names and addresses on mailing labels. The mailing labels were inserted in window envelopes together with other materials for deposit with the Postal Service.

11. Approximately 9 percent of the names on the mailing list were of persons located in the State of New York.

12. Publishers Clearing House had the right to use the mailing lists for the purpose of one mailing only and was required to return the magnetic computer tape, unaltered in any way, to the list owner.

13. L. E. Turner & Company, Inc. was billed by the list owners and paid directly to them all amounts that were charged by the list owners for the use of the lists by Publishers Clearing House.

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14. Publishers Clearing House reimbursed L. E. Turner & Company, Inc. for the amount that was charged by the owner of the mailing list for its use, plus a 25 percent commission.

15. The Federal income tax returns filed by Publishers Clearing House were for the fiscal years ending on the last day of February. Applicants submitted a schedule of the amounts paid by Publishers Clearing House for mailing lists for the audit period September 1, 1970 through August 31, 1973. This schedule, which shows the payment of \$4,446,699.91 and includes the commissions paid L. E. Turner & Company, Inc., is a more accurate reflection of the amounts that were paid to all parties on the mailing lists transactions.

16. Applicants at all times acted in good faith.

#### CONCLUSIONS OF LAW

A. That mailing lists on magnetic computer tape constituted tangible personal property or information services and the receipts paid for their use are subject to the sales and use tax [Matter of Alan Drey Company, Inc. v. State Tax Commission, 67 A.D.2d 1055 (February 15, 1979)].

B. That the commissions paid L. E. Turner & Company, Inc. for securing and providing mailing lists are subject to the sales and use tax within the meaning and intent of section 1101(b) (3) of the Tax Law.

C. That the receipts paid for the use of mailing lists containing addresses of persons inside and outside of New York are taxable in full as use of the tape occurs in New York.

D. That the amount paid by Publishers Clearing House to all parties in connection with its use of mailing lists was erroneously determined by the Sales Tax Bureau. That the amount paid was \$4,446,699.91 which is \$272,919.09 less than the figure used by the Sales Tax Bureau.

1. The first part of the report is a general introduction to the subject of the study. It discusses the importance of the study and the objectives of the research.

2. The second part of the report is a detailed description of the methodology used in the study. It includes information about the sample, the data collection methods, and the statistical analysis.

3. The third part of the report is a presentation of the results of the study. It includes tables, figures, and text describing the findings of the research.

4. The fourth part of the report is a discussion of the results. It interprets the findings and discusses their implications for the field of study.

5. The fifth part of the report is a conclusion. It summarizes the main findings of the study and provides recommendations for future research.

6. The sixth part of the report is a list of references. It includes all the sources of information used in the study.

7. The seventh part of the report is an appendix. It includes any additional information that is relevant to the study but is not included in the main text.

8. The eighth part of the report is a glossary. It defines the key terms used in the study.

9. The ninth part of the report is a bibliography. It lists all the books and articles that have been cited in the study.

10. The tenth part of the report is a list of figures. It includes all the figures that are used in the study.

11. The eleventh part of the report is a list of tables. It includes all the tables that are used in the study.

12. The twelfth part of the report is a list of abbreviations. It includes all the abbreviations that are used in the study.

13. The thirteenth part of the report is a list of symbols. It includes all the symbols that are used in the study.

14. The fourteenth part of the report is a list of footnotes. It includes all the footnotes that are used in the study.

15. The fifteenth part of the report is a list of appendices. It includes all the appendices that are used in the study.

16. The sixteenth part of the report is a list of references. It includes all the sources of information used in the study.

17. The seventeenth part of the report is a list of figures. It includes all the figures that are used in the study.

18. The eighteenth part of the report is a list of tables. It includes all the tables that are used in the study.

19. The nineteenth part of the report is a list of abbreviations. It includes all the abbreviations that are used in the study.

20. The twentieth part of the report is a list of symbols. It includes all the symbols that are used in the study.

21. The twenty-first part of the report is a list of footnotes. It includes all the footnotes that are used in the study.

22. The twenty-second part of the report is a list of appendices. It includes all the appendices that are used in the study.

23. The twenty-third part of the report is a list of references. It includes all the sources of information used in the study.

24. The twenty-fourth part of the report is a list of figures. It includes all the figures that are used in the study.

25. The twenty-fifth part of the report is a list of tables. It includes all the tables that are used in the study.

26. The twenty-sixth part of the report is a list of abbreviations. It includes all the abbreviations that are used in the study.

27. The twenty-seventh part of the report is a list of symbols. It includes all the symbols that are used in the study.

28. The twenty-eighth part of the report is a list of footnotes. It includes all the footnotes that are used in the study.

29. The twenty-ninth part of the report is a list of appendices. It includes all the appendices that are used in the study.

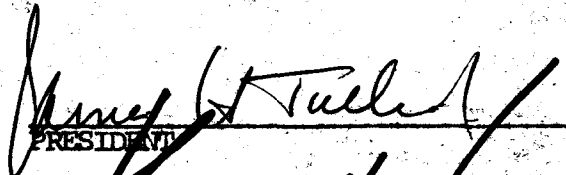
E. That the interest in excess of the minimum statutory rate and the penalty imposed pursuant to section 1145(a) of the Tax Law are hereby cancelled.

F. That the application of Harold E. Mertz and Lester Mertz d/b/a Publishers Clearing House is granted to the extent indicated in Conclusions of Law "D" and "E"; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 13, 1975; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

1. The first part of the report is a summary of the work done during the year. It is a brief statement of the results of the work, and is intended to give a general impression of the progress made. It is not a detailed account of the work, but a summary of the main results. It is intended to be read by those who are not directly concerned with the work, but who are interested in the progress of the work.

REPORT OF THE

COMMISSIONER OF THE

OCT 1 7 1880

James H. Smith  
James H. Smith  
James H. Smith