

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

July 15, 1983

Putnam County Multiple Listing Corp.,  
and John Notas and Roland Merlino  
Route 52, P.O. Box 543  
Carmel, NY 10512

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 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 Law 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  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Edward Sumber  
16A Fair St.  
Carmel, NY 10512  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Putnam County Multiple Listing Corp., :  
and John Notas and Roland Merlino : 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 12/1/75-11/30/78. :

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State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Putnam County Multiple Listing Corp., and John Notas and Roland Merlino the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Putnam County Multiple Listing Corp.,  
and John Notas and Roland Merlino  
Route 52, P.O. Box 543  
Carmel, NY 10512

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  
15th day of July, 1983.

Connie A. Hagelund

Kathy Plaffenbach

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Putnam County Multiple Listing Corp., :  
and John Notas and Roland Merlino :  
  
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 12/1/75-11/30/78. :

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AFFIDAVIT OF MAILING

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Roland Merlino, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Roland Merlino  
Rt. #6  
Mahopac, NY 10541

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  
15th day of July, 1983.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Putnam County Multiple Listing Corp., :  
and John Notas and Roland Merlino :  
  
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 12/1/75-11/30/78. :

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AFFIDAVIT OF MAILING

State of New York  
County of Albany

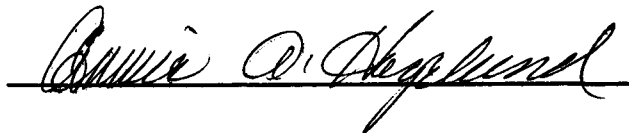
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon John Notas, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Notas  
Rt. 100  
Somers, NY 10589

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  
15th day of July, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Putnam County Multiple Listing Corp., :  
and John Notas and Roland Merlino :  
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 12/1/75-11/30/78. :

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AFFIDAVIT OF MAILING

State of New York  
County of Albany

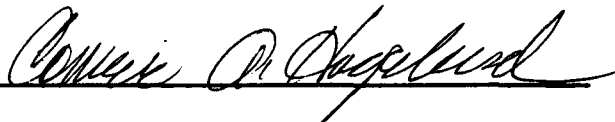
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Edward Sumber the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward Sumber  
16A Fair St.  
Carmel, NY 10512

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  
15th day of July, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
PUTNAM COUNTY MULTIPLE LISTING CORP.,	:	DECISION
JOHN NOTAS and ROLAND MERLINO	:	
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 December 1, 1975	:	
through November 30, 1978	:	

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Petitioners, Putnam County Multiple Listing Corp., John Notas and Roland Merlino, Route 52, P.O. Box 543, Carmel, New York 10512, 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 December 1, 1975 through November 30, 1978 (File Nos. 31649, 31903 and 31904).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 8, 1982 at 1:15 P.M. Petitioners appeared by Edward I. Sumber, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether fees paid to petitioner amounting to five percent of a commission earned by a participating real estate broker, constituted receipts from the sale of a service subject to tax under section 1105(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner Putnam County Multiple Listing Corp. (PCMLC) is a multiple listing service which disseminates information to participating licensed real estate brokers regarding the offering of properties for sale in Putnam County.

PCMLC produces a photographic listing compilation book which is issued to participating brokers on a weekly basis.

2. Real estate brokers that subscribed to the services provided by PCMLC paid an initiation fee, monthly service charge in the form of dues or membership fees, an input fee and a charge for the listing compilation book. PCMLC collected and paid over the sales tax on all such service charges.

3. In addition to the foregoing charges, the Rules and Regulations of PCMLC provide in section 10:0, entitled Division of Commissions as follows:

"The service shall receive the first five (5%) percent of the total commission earned... The remaining commission shall be divided between the listing and selling participant according to the specified division of commission pursuant to Section 10:1 hereof."

Such fees are contingent fees. PCMLC receives no such compensation if the property is not sold during the listing period through the auspices of a participating multiple listing service broker.

4. On December 19, 1979, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against PCMLC covering the period December 1, 1975 through November 30, 1978, for taxes due of \$2,600.85, plus interest of \$417.43, for a total of \$3,018.28.

On the same date, notices were also issued against petitioners John Notas, President and Roland Merlino, Vice President for the period March 1, 1976 through November 30, 1978 for taxes due in the amount of \$2,194.72 plus applicable interest.

5. On audit, the Audit Division determined that petitioner was liable for additional sales taxes of \$2,194.72 on the fees described in Finding of Fact "3". The Audit Division took the position that said fees represented payment

for information services and are taxable the same as the other charges referred to in Finding of Fact "2".

The audit also disclosed use taxes due of \$406.13 which are not in dispute.

Petitioner PCMLC has paid the entire tax deficiency plus applicable interest for a total payment of \$3,015.60. Petitioners John Notas and Roland Merlino do not contest their personal liability as officers of PCMLC.

6. The Certificate of Incorporation of PCMLC sets forth its purposes as follows:

To own, operate and maintain a real estate multiple listing service to provide services to licensed real estate brokers, licensed real estate salesmen and others for the purpose of assisting its subscribers or customers in rendering service to the public by creating a broader and more active market for real estate in the Putnam County area and to stimulate and facilitate transactions of business between its subscribers through cooperation and exchange of exclusive listings for the sale of real estate.

PCMLC argued that it derives five percent (5%) of the total commissions earned in connection with listings disseminated through its facilities for its function of facilitating transactions of business between brokers. It is the position of PCMLC that such contingent compensation is in the nature of a professional fee and as such, is not taxable under any section of the Sales Tax Law.

7. PCMLC is not a licensed real estate broker.

#### CONCLUSIONS OF LAW

A. That the fees paid to petitioner PCMLC by participating real estate brokers, although designated a commission in PCMLC's rules and regulations, constitute receipts from the furnishing of an information service within the

meaning and intent of sections 1101(b)(3) and 1105(c)(1) of the Tax Law and, therefore, such fees are subject to tax.

B. That the petition of Putnam County Multiple Listing Corp., John Notas and Roland Merlino is denied and the notices of determination and demand for payment of sales and use taxes due issued December 19, 1979 are sustained.

DATED: Albany, New York

JUL 15 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 481 208 035

## RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Putnam County Multiple Listing Corp., and John Notas and Roland Merlino</i>	
Street and No. <i>Route 52, P.O. Box 543</i>	
P.O., State and ZIP Code <i>Carmel, NY 10512</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 208 036

## RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Edward Sumner</i>	
Street and No. <i>164 Fair St.</i>	
P.O., State and ZIP Code <i>Carmel, NY 10512</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 208 038

## RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>John Notas</i>	
Street and No. <i>RT #100</i>	
P.O., State and ZIP Code <i>Somers, NY 10589</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 208 037

## RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Roland Merlino</i>	
Street and No. <i>RT #6</i>	
P.O., State and ZIP Code <i>Mahopac, NY 10541</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982