

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Fred M. Schildwachter & Sons :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/82-8/31/82. :
:

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 7th day of November, 1985, he served the within notice of Decision by certified mail upon Fred M. Schildwachter & Sons, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fred M. Schildwachter & Sons
1400 Ferris Place
Bronx, NY 10461

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
7th day of November, 1985.

David Parchuck

Emilie R. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Fred M. Schildwachter & Sons :
for Redetermination of a Deficiency or Revision :
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under Article 28 & 29 of the Tax Law for the :
Period 6/1/82-8/31/82. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 7th day of November, 1985, he served the within notice of Decision by certified mail upon Milton A. Chambers, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton A. Chambers
Marino, Chambers & Lou
175 Main Street
White Plains, NY 10601

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
7th day of November, 1985.

David Parchuck

James J. O'Shaughnessy
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 7, 1985

Fred M. Schildwachter & Sons
1400 Ferris Place
Bronx, NY 10461

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Milton A. Chambers
Marino, Chambers & Lou
175 Main Street
White Plains, NY 10601
Taxing Bureau's Representative

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

NOV 07 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to <i>Mr. M. Schulman & Son</i>	
Street and No. <i>1400 Lewis Place</i>	
P.O., State and ZIP Code <i>Beaver NY 10461</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	

P 153 387 669

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to <i>Walter A. Chambers</i>	
Street and No. <i>1000 Chambers & Son</i>	
P.O., State and ZIP Code <i>175 Plum St</i>	
Postage	<i>White Plains NY 10601</i>
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	