

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Original Consumers Premium Oil Corp. :
for Revision of a Determination or for Refund of :
Sales & Use Taxes under Articles 28 & 29 of the :
Tax Law for the Period 6/1/80-8/31/81 :

In the Matter of the Petition :
of :
Original Consumers Heating Corp. : AFFIDAVIT OF MAILING
for Revision of a Determination or for Refund of :
Sales & Use Taxes under Articles 28 & 29 of the :
Tax Law for the Period Ended 6/30/79. :

In the Matter of the Petition :
of :
Petroleum Heat & Power Co., Inc. :
for Revision of a Determination or for Refund of :
Sales & Use Taxes under Articles 28 & 29 of the :
Tax Law for the Period 9/1/75-2/29/80. :

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Petroleum Heat & Power Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Petroleum Heat & Power Co., Inc.
36-16 19th Avenue
Astoria, NY 11105

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.

Page 2

Affidavit of Mailing

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
6th day of February, 1985.

David Porchuck

Annice A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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In the Matter of the Petition :
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Tax Law for the Period 9/1/75-2/29/80. :

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Barry Silverstein, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barry Silverstein
Otterbourg, Steindler, Houston & Rosen
230 Park Ave.
New York, NY 10169

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.

Page 2

Affidavit of Mailing

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
6th day of February, 1985.

David Parshuck

Bernie A. Shaglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Petroleum Heat & Power Co., Inc.
36-16 19th Avenue
Astoria, NY 11105

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
Barry Silverstein
Otterbourg, Steindler, Houston & Rosen
230 Park Ave.
New York, NY 10169
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
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Sales & Use Taxes under Articles 28 & 29 of the	:	
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In the Matter of the Petition	:	
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Original Consumers Heating Corp.	:	AFFIDAVIT OF MAILING
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Sales & Use Taxes under Articles 28 & 29 of the	:	
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In the Matter of the Petition	:	
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Sales & Use Taxes under Articles 28 & 29 of the	:	
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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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Original Consumers Premium Oil Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Original Consumers Premium Oil Corp.
1267 Randall Avenue
Bronx, NY 10474

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.

Page 2

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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
6th day of February, 1985.

David Parshuck

James P. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Original Consumers Premium Oil Corp.
1267 Randall Avenue
Bronx, NY 10474

Gentlemen:

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Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Leon C. Baker
Gordon, Hurwitz, Butowsky, Baker, Weitzen & Shalov
101 Park Avenue
New York, NY 10178
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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Original Consumers Heating Corp.
1267 Randall Ave.
Bronx, NY 10474

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.

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David Parcluck

James A. Haglund
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STATE OF NEW YORK

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Original Consumers Premium Oil Corp.	:	
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Tax Law for the Period 9/1/75-2/29/80.	:	

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 6th day of February, 1985, he served the within notice of Decision by certified mail upon Leon C. Baker, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon C. Baker
Gordon, Hurwitz, Butowsky, Baker, Weitzen & Shalov
101 Park Avenue
New York, NY 10178

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.

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Sworn to before me this
6th day of February, 1985.

David Parchuck

Omie A. Haglund

Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Original Consumers Heating Corp.
1267 Randall Ave.
Bronx, NY 10474

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.

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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
Leon C. Baker
Gordon, Hurwitz, Butowsky, Baker, Weitzen & Shalov
101 Park Avenue
New York, NY 10178
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ORIGINAL CONSUMERS PREMIUM OIL CORP.
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, 1980
through August 31, 1981.

In the Matter of the Petition
of
ORIGINAL CONSUMERS HEATING CORP.
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,
1979.

DECISION

In the Matter of the Petition
of
PETROLEUM HEAT & POWER CO., 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 September 1,
1975 through February 29, 1980.

Petitioner, Original Consumers Premium Oil Corp., 1267 Randall Avenue,
Bronx, New York 10474, 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, 1980 through August 31, 1981 (File No. 40270).

Petitioner, Original Consumers Heating Corp., 1267 Randall Avenue, Bronx,
New York 10474, 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, 1979 (File No. 36563).

Petitioner, Petroleum Heat & Power Co., Inc., 36-16 19th Avenue, Astoria, New York 11105, 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, September 1, 1975 through February 29, 1980 (File No. 33200).

A consolidated formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 8, 1983 at 10:00 A.M., with all briefs to be submitted by April 9, 1984.

Petitioners, Original Consumers Premium Oil Corp. and Original Consumers Heating Corp., appeared by Gordon, Hurwitz, Butowsky, Baker, Weitzen & Shalov, Esqs. (Leon C. Baker, Esq., of counsel). Petitioner, Petroleum Heat & Power Co., Inc., appeared by Otterbourg, Steindler, Houston & Rosen, P.C. (Barry W. Silverstein, Esq. and Herbert J. Goodfriend, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether the receipts from the sale of customer account lists in connection with the purchase of the assets of home heating oil companies were subject to sales tax either as the sale of an information service or as the sale of tangible personal property.

FINDINGS OF FACT

1. On February 10, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Petroleum Heat & Power Co., Inc. (hereinafter, "Petro") alleging tax due of \$54,148.00 plus interest for the period, September 1, 1975 through February 29, 1980.

2. On December 9, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Original Consumers Heating Corporation (hereinafter, "Consumers Heating Corp.") alleging tax due of \$54,148.00 plus interest for the period ending June 30, 1979.

3. On December 20, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Original Consumers Premium Oil Corporation (hereinafter, "Consumers Premium Corp.") alleging tax due of \$50,313.91 plus interest for the period, June 1, 1980 through August 31, 1981.

4. According to its purchase agreement with Petro, Consumers Heating Corp. purchased "certain assets of Petro used by Petro in connection with its #4 and #6 fuel oil business¹ in New York City and in Westchester County...." The primary asset sold was described by Petro and Consumers Heating Corp. in the purchase agreement as a "customer list" comprising all of Petro's #4 and #6 fuel oil customers in New York City and Westchester. The price paid by Consumers Heating Corp. for the "customer list" was contingent on the number of gallons of heating oil that it would sell, during the year following the closing of the purchase agreement, to Petro's former customers. Petro and Consumers Heating Corp. treated the "customer list" as an intangible asset which they valued at \$676,850.00, which was a substantial portion of the total purchase price of \$792,987.00. The remainder of the total purchase price was, according to the testimony of Iric Sevin, Petro's president, for "the purchase of tangible assets, such as trucks, service parts (which) is undertaken to facilitate obtaining what we are really paying for, the customer relationship."

¹ According to the testimony of Saul Singer, president of Consumers Heating Corp., there are three grades of oil in the heating industry: #2, used mainly in small residential structures up to three or four family houses; #4, used in residential structures up to thirty families; and #6, used in large apartment buildings, institutions, etc.

5. At the closing, Petro transferred a computer tape containing the names and addresses of its #4 and #6 fuel oil customers in New York City and Westchester County to Consumers Heating Corp. In addition, information concerning the amount of fuel oil purchased on an annualized basis, the heating oil tank size, the price charged per gallon and the date a customer relationship was established was provided for each of Petro's #4 and #6 fuel oil customers in New York City and Westchester County. Prior to the closing, Consumers Heating Corp. was provided with all of the above information, except for the specific names and addresses, in a printed form which was attached to the purchase agreement.

6. At the closing, Petro also provided Consumers Heating Corp. with letters and envelopes for each of its #4 and #6 fuel oil customers, addressed and ready to be mailed. The letters informed the customers that Petro was selling its #4 and #6 oil business to Consumers Heating Corp., and that Consumers Heating Corp. had the experience and facilities to provide excellent service.

7. Consumers Heating Corp. paid \$900.00 per year to Standard Abstract Corporation to obtain the names and addresses of all real property owners in Manhattan and the Bronx. In addition, the information provided by Standard Abstract Corporation included the telephone number of the owner and the building size.

8. The Audit Division asserted the contested sales tax liability against petitioner Consumers Heating Corp. as a purchaser in a bulk sale of Petro's business assets pursuant to Tax Law §1141(c).

9. Petitioner Consumers Premium Corp. (which is also controlled by Saul Singer) was a purchaser in a bulk sale of the business assets of Northville Industries Corp. (hereinafter, "Northville"). Consumers Premium Corp. purchased a customer list comprised of all of Northville's fuel oil customers in New York

City and Westchester County. There is no specific evidence in the record concerning the exact amount paid by Consumer's Premium Corp. for the customer list.² However, petitioner Consumers Premium Corp. is not contesting the valuation of such asset which the Audit Division alleged is subject to sales tax upon its transfer.

10. Northville was required to provide petitioner Consumers Premium Corporation with letters³ addressed to its former customer similar to those which Petro provided Consumers Heating Oil, as described in Finding of Fact "6", *supra*.

11. Petitioner Consumers Premium Corp. obtained the customer list consisting of the names and addresses of Northville's customers in printed form prior to the closing. The list was attached to the purchase agreement as "Schedule A."

12. Petitioners' position is that the list of names and addresses provided by Petro to Consumers Heating Corp. and by Northville to Consumers Premium Corp. are worth no more than what Consumers Heating Corp. pays Standard Abstract Corporation for names and addresses of real property owners as noted in Finding of Fact "7", *supra*. Petitioners argue that the payments at issue were for the transfer of customers' patronage or the customers' relationship with the selling corporation. According to the testimony of Petro's accountant, James Ward, the customer lists are intangible assets which are not considered goodwill because goodwill has "the connotation of not depleting in value." Petitioner's

² The purchase agreement requires petitioner Consumers Premium Corporation to pay a maximum of \$2,000,000 to Northville Industries Corp. The agreement provides for a reduction in such payment if petitioner sells less than certain specified amounts of fuel oil to Northville's former customers in the year following the closing date.

³ The form of the letter was specified in Schedule D of the purchase agreement.

position is that based on statistical analysis, the amount paid for "customers' patronage" is properly depreciated over a six year life.

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 the receipts from the sale of the customer lists at issue are properly taxable under Tax Law §1105(c)(1) as a sale of the service of furnishing information. Matter of Audell Petroleum Corp., State Tax Commission, December 14, 1984.

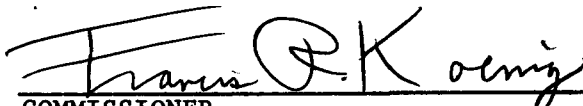
C. That the petitions of Original Consumers Premium Oil Corp., Original Consumers Heating Corp. and Petroleum Heat & Power Co., Inc. are denied and the notices of determination and demand at issue are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

PS Form 3800, Feb. 1982

P 470 316 486

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Ken C Baker</i>	
Street and No. <i>London Business Bulwark</i>	
P.O., State and ZIP Code <i>Baker Westgate @ Shelby</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 470 316 488

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Patricia Ann Deane Baker</i>	
Street and No. <i>36-16 19th Ave</i>	
P.O., State and ZIP Code <i>Queens NY 11105</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 470 316 489
RECEIPT FOR CERTIFIED MAILNO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Barry Silverstein</i>	
Street and No. <i>107 Broadway Steindler Plaza</i>	
P.O., State and ZIP Code <i>New York</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 470 316 487

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Original Consumer Premier</i>	
Street and No. <i>Old West</i>	
P.O., State and ZIP Code <i>1267 Randall Ave</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 470 316 485
RECEIPT FOR CERTIFIED MAILNO INSURANCE COVERAGE PROVIDED—
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(See Reverse)

Sent to <i>Original Consumer Premier</i>	
Street and No. <i>1267 Randall Ave</i>	
P.O., State and ZIP Code <i>Brooklyn NY 11247</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