

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Skaggs Walsh, Inc.

:

:

AFFIDAVIT OF MAILING

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 12/1/79 - 10/31/80.

:

:

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 Skaggs Walsh, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Skaggs Walsh, Inc.
119-02 23rd Avenue
College Point, NY 11356

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
6th day of February, 1985.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Skaggs Walsh, Inc.	:	AFFIDAVIT OF MAILING
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 12/1/79 - 10/31/80.	:	

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 Nicholas J. Damadeo, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nicholas J. Damadeo
1205 Franklin Ave.
Garden City, NY 11530

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
6th day of February, 1985.

David Parchuck

Bennie R. Highland
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 6, 1985

Skaggs Walsh, Inc.
119-02 23rd Avenue
College Point, NY 11356

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
Nicholas J. Damadeo
1205 Franklin Ave.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SKAGGS WALSH, 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 December 1, 1979	:	
through October 30, 1980.	:	

Petitioner, Skaggs Walsh, Inc., 119-02 23rd Avenue, College Point, New York 11356, 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, 1979 through October 30, 1980 (File No. 33220).

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 May 24, 1983 at 9:15 A.M., with all briefs to be submitted by August 30, 1983. Petitioner appeared by Nicholas J. Damadeo, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel).

ISSUES

I. Whether the sale of a customer list as part of the bulk sale of business assets constituted the furnishing of an information service subject to tax under section 1105(c)(1) of the Tax Law.

II. Whether the sale of such customer list constituted a retail sale of tangible personal property.

FINDINGS OF FACT

1. On January 13, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Skaggs

Walsh, Inc., covering the period December 1, 1977 through October 31, 1980 for taxes due of \$6,560.00, plus interest of \$92.96, for a total of \$6,652.96. The notice indicated that the taxes were determined due from McAllister Fuel Oil, Inc. and that petitioner, as purchaser in a bulk sale transaction, was liable for such taxes in accordance with section 1141(c) of the Tax Law.

2. Petitioner was engaged in the retail fuel oil business. On October 20, 1980, petitioner entered into an agreement to purchase the business assets of McAllister Fuel Oil, Inc. ("McAllister") for \$135,000.00. The agreement allocated the total sales price as follows:

goodwill	\$ 3,000.00
customer list	82,000.00
equipment	30,000.00
restrictive covenants	20,000.00

The customer list referred to above consisted of 44 pages and was annexed to the sale agreement as Exhibit "A".

3. The Audit Division considered that the sale of the customer list was the furnishing of information, subject to the tax imposed under section 1105(c)(1) of the Tax Law.

The total tax due on the notice issued to petitioner represented the tax computed on the portion of the sales price allocated to the customer list.

At the hearing, counsel for the Audit Division also argued that the customer list was taxable under section 1105(a) of the Tax Law as a retail sale of tangible personal property.

4. The customer list annexed to the sale agreement was divided into three columns. The first column of each page stated the name and address of the customer. The second column indicated whether or not the customer had a service contract with McAllister. The third column indicated the expiration date of the service contract, if applicable.

With the exception of the above information, all other facts concerning the customer, i.e., degree day cards, size of tank, location of fill, service records and credit, are reflected in the business records.

5. McAllister had contracts with its customers for the delivery of fuel oil and for service. These contracts were either written or oral, but in all cases were indefinite in duration. Under a typical contract, McAllister supplied fuel oil to a customer on an automatic delivery basis. Consumption factors were calculated for each individual customer on a degree day basis so that the company could anticipate when each customer was due for a delivery. In some cases, customers were on a "will call" basis.

McAllister notified its customers that, as of a certain date, petitioner would be supplying their fuel oil and service. Petitioner also notified the same customers advising them that it was assuming the responsibilities of McAllister.

Petitioner took the position that the sale of the customer list was an assignment of contractual rights and obligations which is not subject to the imposition of sales and use taxes.

6. As part of the sale agreement, the principals of McAllister executed restrictive covenants which prohibited, inter alia, the soliciting or accepting of business from any of the customers on the customer list or disclosure of the names on such list to other persons.

Petitioner also required employees to execute restrictive covenants in which they agreed not to disclose the names of petitioner's customers.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a tax upon the "receipts from every retail sale of tangible personal property, except as otherwise

provided in [Article 28]". 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, mot. for lv. to app. den. 49 N.Y.2d 707; Matter of Meadowbrook Removal Corp., State Tax Commission, December 17, 1984).

C. That the petition of Skaggs Walsh, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 13, 1981 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985

Roderick C. Cline
PRESIDENT

Francis R. Kolnig
COMMISSIONER

Mark J. [Signature]
COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Blagg Walter Inc.</i>	
Street and No. <i>114-12 23rd Ave.</i>	
P.O. State and ZIP Code <i>College Point NY 11356</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 693 169 550

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Nicholas J. Domadedo</i>	
Street and No. <i>1205 Glenview Ave</i>	
P.O. State and ZIP Code <i>Garden City NY 11530</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	