

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Watson Oil Co., 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 12/1/78 - 11/30/81.

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 23rd day of May, 1985, he served the within notice of decision by certified mail upon Watson Oil Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Watson Oil Co., Inc.
Route 81
West Coxsackie, NY 12192

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
23rd day of May, 1985.

David Parchuck

James J. O'Day

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Watson Oil Co., 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 12/1/78 - 11/30/81.

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 23rd day of May, 1985, he served the within notice of decision by certified mail upon Fred B. Wander, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fred B. Wander
O'Connell & Aronowitz
100 State St.
Albany, NY 12207

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
23rd day of May, 1985.

David Parchuck

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

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

May 23, 1985

Watson Oil Co., Inc.
Route 81
West Coxsackie, NY 12192

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
Fred B. Wander
O'Connell & Aronowitz
100 State St.
Albany, NY 12207
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Amos Post, 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 12/1/78-11/30/81.

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 23rd day of May, 1985, he served the within notice of decision by certified mail upon Amos Post, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Amos Post, Inc.
One Amos Post Rd., P.O. Box 351
Catskill, NY 12414

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
23rd day of May, 1985.

David Parchuck

William 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 :
Amos Post, 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 12/1/78-11/30/81.

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 23rd day of May, 1985, he served the within notice of decision by certified mail upon Fred B. Wander, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fred B. Wander
O'Connell & Aronowitz
100 State St.
Albany, NY 12207

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
23rd day of May, 1985.

David Parchuck

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

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

May 23, 1985

Amos Post, Inc.
One Amos Post Rd., P.O. Box 351
Catskill, NY 12414

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 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
Fred B. Wander
O'Connell & Aronowitz
100 State St.
Albany, NY 12207
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
WATSON OIL 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 December 1, 1978
through November 30, 1981.

DECISION

In the Matter of the Petition
of
AMOS POST, 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 December 1, 1978
through November 30, 1981.

Petitioner, Watson Oil Co., Inc., Route 81, West Coxsackie, New York 12192, 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, 1978 through November 30, 1981 (File No. 37952).

Petitioner, Amos Post, Inc., One Amos Post Road, P.O. Box 351, Castleton, New York 12414, 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, 1978 through November 30, 1981 (File Nos. 42504 and 42833).

A formal hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on June 19, 1984 at 9:15 A.M., and was continued to conclusion before the same Hearing Officer, at the same location on July 2, 1984 at 11:00 A.M.,

with all briefs to be submitted by September 4, 1984. Petitioners appeared by O'Connell and Aronowitz, P.C. (Fred B. Wander, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUES

- I. Whether receipts from the sale of a customer list are subject to tax.
- II. If so, whether the valuation of the customer list by the Audit Division was correct.

FINDINGS OF FACT

1. On March 8, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Watson Oil Co., Inc. ("Watson Oil") for taxes due of \$22,905.26, plus interest of \$568.28, for a total amount due of \$23,473.54 for the period December 1, 1978 through November 30, 1981.

2. On the same date, the Audit Division also issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Amos Post, Inc. ("Amos Post") in the same amount for the same period.

3. It is the position of the Audit Division that the receipts from the sale of a customer list are taxable as the sale of tangible personal property under section 1105(a) of the Tax Law and/or as the sale of an information service under section 1105(c)(1) of the Tax Law.

4. On May 28, 1982, Watson Oil timely filed a petition for a hearing to review the notice of determination. On April 28, 1982, Amos Post timely filed a petition to review the notice of determination. Both petitioners claim that the customer list does not constitute tangible personal property; that the customer list contains information which is personal and/or confidential in nature which may not be substantially incorporated in reports furnished to

other persons; that Watson Oil is not involved on a regular basis in providing services which include the furnishing of information concerning its customers to other persons; and that the method of valuation of the customer list used by the Audit Division was incorrect.

5. During the period at issue, Watson Oil, a New York corporation, was engaged in the retail distribution of fuel oil (home heating oil) and kerosene. On July 27, 1981, Watson Oil and Amos Post, also a New York corporation, executed an agreement for the purchase of the assets of Watson Oil by Amos Post. The total purchase price, which was estimated to be \$417,118.00, was allocated as follows:

Fuel oil and kerosene amounts	\$327,218.00
Equipment	36,275.00
Tanks and pumps	40,000.00
Skid tanks	13,625.00
	<u>\$417,118.00</u>

6. Paragraph 1(a) of the agreement provided, in pertinent part, the following:

"I. (a) The Seller agrees to sell and the Purchaser agrees to purchase all of the said fuel oil accounts and kerosene oil accounts owned by the Seller on the dated fixed herein for transfer thereof, which consists of 2,181,454 gallons of fuel oil and kerosene oil, (being the volume of sales during the fiscal period of October 1, 1980 to September 30, 1981), at the agreed purchase price of fifteen cents per gallon, estimated to be the sum of \$327,218.00, at this time, but the exact amount shall be determined at the time of closing and substituted in the selling price at that time, and to be paid in the manner as hereinafter set forth...

It is understood and agreed that the purchase price for the sale of the fuel oil and kerosene oil accounts has been fixed based upon the gallonage sales for the fiscal period of October 1, 1980 to September 30, 1981, at the rate of fifteen cents per gallon. The said purchase price shall be adjusted at the end of the first year following closing of title based upon the retained gallonage of fuel oil and kerosene oil during that period. In the event that the total gallonage of the accounts transferred or purchased during that period of time shall increase, the purchase price shall be adjusted upward accordingly at the rate of fifteen cents per gallon and said increased amount shall be paid within thirty days in cash or certified

check to the Seller. In the event that the total gallonage of fuel oil and kerosene oil shall decrease at that time, the purchase price shall be adjusted downward at the rate of fifteen cents per gallon and shall be repaid by the Seller to the Purchaser by deducting the same from the next installment of principal due on note. However, in no event shall the purchase price for the said fuel oil and kerosene oil accounts be less than the sum of \$264,000."

The closing of title took place on October 1, 1981.

7. The fuel oil accounts and kerosene accounts, also referred to as the customer list, were transferred from Watson Oil to Amos Post in written form. In addition to the name and address of the customer, the list contained the customer credit, tank size, when to deliver to the customer on a degree day basis, tank location and fill location. Both parties considered the customer list to be confidential information.

8. On or about one year following the closing of title, the purchase price of the customer list was reduced to \$264,000.00.

9. On audit, the examiner for the Audit Division found that neither petitioner paid tax on the transfer of the customer list.

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; Dairymens League Co-op Association, Inc. et al. , State tax Commission, December 14, 1984). Therefore, the Audit Division properly determined that the sale of the customer list is subject to tax.

C. That the tax due on the customer list is to be based on \$264,000.00 (Finding of Fact "8", supra) and not \$327,218.00 as originally determined by the Audit Division.

D. That the petitions of Watson Oil Co., Inc. and Amos Post, Inc. are granted to the extent indicated in Conclusion of Law "C", supra; that the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued March 8, 1982; and that except as so granted, the petitions are denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985

Rodwin C. W. Allen
PRESIDENT

COMMISSIONER

Mark Frank
COMMISSIONER

4/16/85
I abstain!!
Francis R. Koenig

P 693 169 867

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

P 693 169 868

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

P 693 169 866

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Waters Oil Co. Inc.</i>	
Street and No. <i>Rt 81</i>	
P.O., State and ZIP Code <i>West. W. Sackville NY 12414</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	

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Thomas Post Inc.</i>	
Street and No. <i>One Thomas Post Rd Box 357</i>	
P.O., State and ZIP Code <i>Calverton NY 12414</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	

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Fred B. Bondu</i>	
Street and No. <i>St. Charles & Community</i>	
P.O., State and ZIP Code <i>100 State St. Albany NY 12207</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	