

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Shoreline 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 3/1/82-6/30/83. :
_____ :

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he/she served the within notice of Decision by certified mail upon Shoreline Oil Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Shoreline Oil Co., Inc.
34 Evans St.
New Rochelle, NY 10805

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
28th day of January, 1986.

David Parchuck

Connie A. Hagelund

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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|---|---|----------------------|
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| Shoreline Oil Co., Inc. | : | |
| for Redetermination of a Deficiency or Revision | : | AFFIDAVIT OF MAILING |
| of a Determination or Refund of Sales & Use Tax | : | |
| under Article 28 & 29 of the Tax Law for the | : | |
| Period 3/1/82-6/30/83. | : | |

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he served the within notice of Decision by certified mail upon Vincent R. Rippa, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Vincent R. Rippa
Marcus, Rippa & Gould
4 Cromwell Place
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
28th day of January, 1986.

David Parchuck

Connie A. Hagelund

Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

Shoreline Oil Co., Inc.
34 Evans St.
New Rochelle, NY 10805

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
Vincent R. Rippa
Marcus, Rippa & Gould
4 Cromwell Place
White Plains, NY 10601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

SHORELINE OIL CO., 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 March 1, 1982
through June 30, 1983.

Petitioner, Shoreline Oil Co., Inc., 34 Evans Street, New Rochelle, New York 10805, 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 March 1, 1982 through June 30, 1983 (File No. 47516).

A hearing was held before Frank Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 22, 1985 at 1:15 P.M. Petitioner appeared by Marcus, Rippa & Gould (Vincent R. Rippa, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Mark Volk, Esq., of counsel).

ISSUE

Whether petitioner was properly held subject to tax on its purchase of a customer list.

FINDINGS OF FACT

1. On August 15, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Shoreline Oil Co., Inc. ("Shoreline") covering the period March 1, 1982 through June 30, 1983, asserting taxes due of \$36,136.27, plus interest of \$715.65, for a total of \$36,858.25. The notice stated that the taxes were determined to be due from

Northern Hudson Oil Co., Inc. ("Hudson") 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. Hudson was a retail fuel oil distributor. In June, 1983, Hudson sold all of its business assets to three purchasers: Shoreline, Panco Equipment Corp. ("Panco") and Ronald Pufhal ("Pufhal"). Following the sale, the Audit Division conducted an audit of Hudson's available books and records which revealed taxes due as follows:

| | |
|--|--------------------|
| Audited sales and use taxes due from Hudson | \$ 9,886.98 |
| Sales tax due from bulk sale of assets to: | |
| (a) Panco | 1,760.69 |
| (b) Pufhal | 977.50 |
| (c) Shoreline | 23,511.10 |
| TOTAL | <u>\$36,136.27</u> |

3. The total tax due on the notice issued to Shoreline represents taxes determined to be due from Hudson and asserted against Shoreline as a purchaser in a bulk sale of Hudson's assets. At the hearing, the Audit Division conceded that Panco, Pufhal and Hudson made payments totalling \$12,625.17 plus interest reducing Shoreline's liability to \$23,511.10 plus statutory interest.

4. By an agreement dated April 30, 1983, Shoreline purchased from Hudson a retail fuel oil business. The agreement between the parties allocated the total sales price as follows:

| | |
|-----------------------|--------------|
| Equipment | \$194,500.00 |
| Customer list | 574,391.00 |
| Restrictive covenants | 6,000.00 |

5. Upon audit of Hudson's records, the Audit Division determined that Shoreline had failed to pay sales tax on two items: (1) the customer list for which it actually paid Hudson \$314,891.00 and (2) a two-way radio which Shoreline purchased for \$9,400.00. The sale of the customer list was treated by the

Audit Division as the furnishing of information taxable under section 1105(c) of the Tax Law. Thus, it was determined that Shoreline is liable for sales tax of \$23,511.10 on purchases of \$324,291.00.

6. Shoreline takes the position that "the sale of a customer list does not operate as the sale of information but rather as the assignment of contractual rights" and, as such, is not subject to sales or use tax.

7. The customer list consisted of the names, addresses and telephone numbers of Hudson's customer accounts. All other information about the customers (e.g., tank sizes, degree days, location of fill, credit standing) was contained in Hudson's business records which were also transferred to Shoreline. Following receipt of the customer list, Shoreline contacted each customer to verify Hudson's information and to enlist the customer as a Shoreline account.

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 petitioner's liability for sales tax due is reduced to \$23,511.10 plus statutory interest in accordance with Findings of Fact "3" and "5".


D. That the petition of Shoreline Oil Co., Inc. is granted to the extent indicated in Conclusion of Law "C", but is in all other respects denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, as revised accordingly, is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER