

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Southside Carting Co., Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax  
under Article(s) 28 & 29 of the Tax Law for the :  
Period 11/30/79.  
\_\_\_\_\_ :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, 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 30th day of June, 1986, he/she served the within notice of Decision by certified mail upon Southside Carting Co., Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Southside Carting Co., Inc.  
1839 Gilford Ave.  
New Hyde Park, NY 11040

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  
30th day of June, 1986.

David Parchuck

Janet M. Snay  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Southside Carting Co., Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax :  
under Article(s) 28 & 29 of the Tax Law for the :  
Period 11/30/79. :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, 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 30th day of June, 1986, he served the within notice of Decision by certified mail upon John J. Barnosky, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John J. Barnosky  
Farrell, Fritz, Caemmerer, Cleary, Barnosky & Armentano  
22 Jericho Tpke.  
Mineola, NY 11501

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  
30th day of June, 1986.

David Parchuck

Janet M. Snay  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

June 30, 1986

Southside Carting Co., Inc.  
1839 Gilford Ave.  
New Hyde Park, NY 11040

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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
John J. Barnosky  
Farrell, Fritz, Caemmerer, Cleary, Barnosky & Armentano  
22 Jericho Tpke.  
Mineola, NY 11501

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
SOUTHSIDE CARTING 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 November 30, 1979

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DECISION  
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Petitioner, Southside Carting Co., Inc., 1839 Gilford Avenue, New Hyde Park, NY 11040, 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 November 30, 1979 (File No. 39677).

A 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 March 11, 1985 at 1:15 P.M. with all briefs to be submitted by February 28, 1986 . Petitioner appeared by John J. Barnosky, Esq. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

#### ISSUE

I. Whether the transfer 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 and if so,

II. Whether the amount allocated in the purchase agreement to a covenant not to compete was the value of the customer list.

#### FINDINGS OF FACT

1. Petitioner, Southside Carting Co., Inc. ("Southside") operated a commercial refuse removal business.

2. On November 6, 1979, Southside entered into an agreement with Meadowbrook Removal Corp. ("Meadowbrook") whereby Southside agreed to purchase certain business assets of Meadowbrook for \$251,040.00. The agreement specifically provided that Southside was to purchase certain equipment and customer lists from Meadowbrook so that it may utilize said equipment and service said customers. The purchase price was allocated in the agreement as follows:

Covenant not to compete	\$150,624.00
Equipment	50,208.00
Goodwill	50,208.00
Total	<u>\$251,040.00</u>

The customer list referred to above consisted of 4 pages and was annexed to the agreement as "Schedule A". The list enumerated the customer names, addresses and monthly charge to each customer.

3. The restrictive covenant clause contained in the agreement stated that Meadowbrook and "all of the persons active as principals in the said business" agreed "not to reestablish , re-open, be engaged in, nor in any manner whatsoever become interested, directly or indirectly, either as employee, as owner, as partner, as agent, as stockholder, director or officer of a corporation, or otherwise, in any business, trade or occupation relating to commercial refuse removal, or similar thereto, within the Town of Huntington for a period of five (5) years from the closing date".

4. On July 6, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Southside for taxes due of \$10,501.68, plus interest of \$2,750.59, for a total of \$13,252.27. Said notice stated that the tax assessed thereon was determined to be due on the purchase of customer lists from Meadowbrook on November 6, 1979 and that the lists were valued at \$150,024.00. The Audit Division took the position that

the agreement provided for the sale of a customer list which constituted the furnishing of information subject to the tax imposed under section 1105(c)(1) of the Tax Law. The Audit Division deemed the valuation of the covenant not to compete to be the sales price of the customer list.

5. Meadowbrook notified its customers by letter that, effective November 1, 1979, Southside had acquired the business and was assuming responsibility for their refuse removal business. The customers, however, had no obligation to have Southside provide such service.

6. As part of the transaction, Meadowbrook assigned its existing contracts and transferred a list of customers and accounts to Southside. Southside argued that the list along with the information contained thereon was of no value absent the sale of the business. Southside took the position that the covenant not to compete was the key component of the sale and was separate and distinct from the mere furnishing by Meadowbrook of the list of customer contracts. Some of the customers on the list were not located in the Town of Huntington, the only area covered by the restrictive covenant.

7. As an alternative, Southside argued that even if the transfer of the customer list was taxable, the entire amount allocated to the covenant not to compete should not have been allocated to the customer list. Southside maintained that the agreement provided that the customer list was transferred in connection with Meadowbrook's goodwill and that the value of the list must be less than the value allocated in the agreement to goodwill since the value of the goodwill was comprised in part of the goodwill in the existing customers and in part of Meadowbrook's goodwill in its name and reputation.

#### 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 agreement between Southside and Meadowbrook provided for the sale of a customer list. 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. 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 Skaggs Walsh, Inc. v. State Tax Commission, \_\_ A D 2d \_\_, 3rd Dept., May 1, 1986.

C. That the total amount allocated in the agreement to the covenant not to compete was associated with the sale of the customer list and the Audit Division properly determined the tax due thereon (Matter of Meadowbrook Removal Corp., State Tax Commission, December 17, 1984).

D. That the petition of Southside Carting Co., Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use taxes due issued July 6, 1982 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 30 1986

Rodolph W. Clue  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. [Signature]  
COMMISSIONER