

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Wowkowych Enterprise Disposal Services, 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 6/1/82 - 8/31/82. :

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 3rd day of January, 1986, he served the within notice of Decision by certified mail upon Wowkowych Enterprise Disposal Services, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Wowkowych Enterprise Disposal Services, Inc.
1195 Ridgeway Ave.
Rochester, NY 14615

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
3rd day of January, 1986.

David Parchuck

Carrie D. 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 :
Wowkowych Enterprise Disposal Services, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
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under Article 28 & 29 of the Tax Law for the :
Period 6/1/82 - 8/31/82. :

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 3rd day of January, 1986, he served the within notice of Decision by certified mail upon Michael R. McEvoy, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael R. McEvoy
Harter, Secrest & Emery
700 Midtown Tower
Rochester, NY 14604

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
3rd day of January, 1986.

David Parchuck

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

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

January 3, 1986

Wowkowych Enterprise Disposal Services, Inc.
1195 Ridgeway Ave.
Rochester, NY 14615

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
Michael R. McEvoy
Harter, Secrest & Emery
700 Midtown Tower
Rochester, NY 14604
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WOWKOWYCH ENTERPRISE DISPOSAL SERVICES, 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 June 1, 1982	:	
through August 31, 1982.	:	

Petitioner, Wowkowych Enterprise Disposal Services, Inc., 1195 Ridgeway Avenue, Rochester, New York 14615, 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, 1982 through August 31, 1982 (File No. 41395).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 259 Monroe Avenue, Rochester, New York, on February 6, 1985 at 9:15 A.M., with all briefs to be submitted by June 14, 1985. Petitioner appeared by Harter, Secrest & Emery (Michael R. McEvoy, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUES

I. Whether the receipts from the sale of a customer account file in connection with the purchase of the assets of a refuse removal business were subject to tax as the sale of an information service.

II. Whether the receipts from the transfer of municipal contract rights in connection with such sale were subject to tax as a result of the failure of the contract to allocate the purchase price between taxable and nontaxable items.

FINDINGS OF FACT

1. On October 25, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Wowkowych Enterprise Disposal Services, Inc., in the amount of \$6,300.00, plus interest of \$132.80 for a total due of \$6,432.80 for the period June 1, 1982 through August 31, 1982. The notice stated that the taxes were determined to be due from Pagano Refuse, Inc. ("Pagano") and represented petitioner's liability as a bulk sale purchaser pursuant to section 1141(c) of the Tax Law.

2. By contract dated July 19, 1982, petitioner purchased from Anthony Pagano, for a price of \$500,000.00, all of the assets of Pagano, a refuse hauling business. The purchase price of \$500,000.00 was allocated primarily to operating equipment and other assets, but the contract also allocated \$90,000.00 to:

"c. All of the refuse stops, together with all customer records pertaining thereto and set forth in Schedule C attached..."

Despite said language in the contract, no "Schedule C" was ever attached.

3. The refuse stops and customer records which were transferred from Pagano to petitioner were generally of two types. The first were contracts for refuse collection entered into with various municipalities. These contracts were evidenced by written agreements, the rights to which were assigned to petitioner. The second type of record transferred was a set of customer ledger cards containing the name and billing address of each residential customer serviced by Pagano. Pagano had oral agreements with the residential customers who were issued payment coupon books. Each month, the customers sent a coupon with their payments. Some of the residential customers paid for the service for six months to one year in advance, but all residential customers could

cancel the refuse collection service at any time. The municipal contracts did not generally provide for such cancellation and usually were for one year's duration or longer.

4. The customer account cards did not always contain the correct service addresses of the customers and petitioner, upon taking over the business, sent its staff out on the truck routes to record the proper service addresses for the customers. Petitioner maintains that, because it had to compile a service route list in this manner, a written customer list was never transferred from Pagano as part of the sale and, thus, no sales tax liability arose as the result of the transaction.

5. The Audit Division and petitioner stipulated that the municipal contract customers represented 40 percent of the total valuation of the customer records transferred and the residential customers represented 60 percent of the valuation. The parties also stipulated that the transfer of the municipal contracts constituted an assignment of intangible contractual rights not subject to sales tax under sections 1105(a) or 1105(c)(1) of the Tax Law. The Audit Division maintains, however, that, because the purchase price of the customer records was not allocated between taxable and nontaxable items, the entire purchase price was subject to sales tax.

6. Along with its brief, petitioner submitted proposed findings of fact, all of which have been incorporated herein with the exception of that part of proposed finding "6" dealing with the oral transfer of individual contracts which was not supported by the evidence.

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. The fact that the customer names were transferred on ledger cards which had only billing addresses does not render the transfer nontaxable. (See Matter of Audell Petroleum Corp., State Tax Commission, December 14, 1984.) Therefore, the Audit Division properly determined that the residential customer records transferred from Pagano to petitioner were subject to sales tax as the sale of a customer list. Moreover, the residential customers did not have formal, long-term, assignable contracts with Pagano. The residential customers had, at most, month-to-month contracts with no assignable rights which could have been acquired by petitioner.


C. That the fact that the contract did not allocate the purchase price of the customer records between taxable and nontaxable items does not cause the entire purchase price to be subject to tax where, as here, a valuation of the items subject to tax is obtainable. In such a case, "[t]he Tax Commission [has] the right, indeed, the obligation, to arrive at a fair sales price of the..." taxable items for sales tax purposes. WEBR, Inc. v. State Tax Commission,

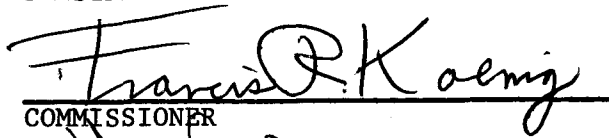
58 A.D.2d 471 (Emphasis in original). Since petitioner and the Audit Division agreed that 40 percent of the total purchase price of the customer records were nontaxable assignments of contractual rights, only the remaining 60 percent of the purchase price, or \$54,000.00, which represented the value of the residential customer account cards, was properly subject to sales tax. Thus, the tax due is to be reduced to \$3,780.00 plus minimum interest.

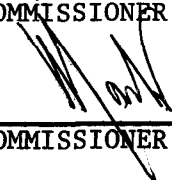
D. That the petition of Wowkowych Enterprise Disposal Services, Inc. is granted to the extent indicated in Conclusion of Law "C"; that the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 25, 1982 is to be modified accordingly; and that, except as so modified, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

