

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
OLD COUNTRY TOYOTA CORP. : 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, 1980 :  
through November 30, 1980. :

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Petitioner, Old Country Toyota Corp., 340 West Old Country Road, Hicksville, New York 11801, 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, 1980 through November 30, 1980 (File No. 41030).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 3, 1986 at 1:45 P.M., with all briefs to be filed by March 14, 1986. Petitioner appeared by Isaac Sternheim & Co. (Isaac Sternheim, C.P.A.) The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner should be granted a refund of penalties and interest in excess of the minimum statutory rate which were imposed for the late payment of sales tax.

FINDINGS OF FACT

1. Petitioner, Old Country Toyota Corp., engaged in the sale and servicing of new and used automobiles, filed sales and use tax returns for the period March 1, 1980 through November 30, 1980, without remitting \$252,985.88 due for

said periods. On April 22, 1981, the petitioner, by signature of its president, John S. Bucalo, executed a "Payment Agreement" whereby it consented to pay the above liability at the rate of \$4,000.00 per week, together with additional penalty and interest as provided by the Tax Law. The payments began on May 1, 1981 and continued until February 23, 1982, at which time the petitioner submitted a check in the amount of \$122,652.85 to pay the unpaid balance in full including the unpaid tax of \$50,166.55 and penalty and interest in the amount of \$72,486.30.

2. On March 16, 1982, the petitioner filed with the Audit Division an Application for Credit or Refund of State and Local Sales or Use Tax whereby it requested a refund of the \$72,486.30 penalty and interest payment. On April 26, 1983, the Audit Division denied petitioner's claim in full. Petitioner timely filed an application for a hearing to review said denial.

3. By letter dated February 25, 1982, Mr. Bucalo explained the predicament which led to petitioner using its sales tax collection as working capital. According to Mr. Bucalo, having had a good relationship with Chase Manhattan Bank ("Chase") for 30 years, he applied for and received a \$350,000 S.B.A. guaranteed loan to purchase this dealership (Old Country Toyota Corp.) on March 17, 1977. He continued to have a good relationship with Chase and both prospered in that relationship, as he acceded to its demands to give Chase all of petitioner's bank accounts, floor plan account and retail installment paper. Unfortunately, however, a high Chase official named Mr. Hummer one day decided to cut back and, finally, to terminate petitioner's floor plan, without any apparent reason. He later put another Chase employee by the name of Mrs. Fox into the job of wiping out petitioner's floor plan account. Chase, in effect, seized petitioner's bank account, returning all checks it wrote unpaid and

using the balance only to pay off floor planned cars. Petitioner was forced to open an account at another bank. Mrs. Fox threatened to seize all of petitioner's floor planned cars unless petitioner turned over all certificates of origin and titles to all the new and used cars which it owned outright as well as those owned by Mr. Bucalo and at his Flemington Toyota dealership in Flemington, New Jersey. Petitioner could only get those C.O.'s or titles when it "paid off" the cars, as it sold them, whether they were on floor plan or not, to reduce, and, finally, to eliminate the entire floor plan balance. In effect, Chase seized the entire working capital of petitioner and Mr. Bucalo's Flemington dealership, endangering both dealerships, their employees and families, their franchises, and the Bucalo family. Regretfully, petitioner was forced into using its sales tax collections as working capital to keep it operating as a constructive, viable, profitable business.

#### CONCLUSIONS OF LAW

A. That section 1145(a)(1)(i) of the Tax Law provides for the imposition of penalty and interest for failure to file a return or to pay over any tax when due. Subparagraph (iii) of section 1145(a)(1) provides for the remission of penalty and that portion of interest that exceeds the minimum statutory rate if the Tax Commission determines that the failure or delay was due to reasonable cause and not due to willful neglect.

B. That reasonable cause, which is defined in 20 NYCRR 536.1(b), does not include financial inability or the need to use the taxes collected for other pressing obligations.

C. That petitioner collected sales taxes as trustee for and on account of the State of New York and failed to pay over the same to the State Tax Commission as required. Tax Law §§1132 and 1137.

D. That the petition of Old Country Toyota Corp. is denied and the refund denial issued April 26, 1983 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

**JUN 30 1986**

Rodwinchew Clu  
PRESIDENT

Frank R. Koenig  
COMMISSIONER

Mark J. Judd  
COMMISSIONER