

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

December 29, 1982

Ake Sjogren
Flygarvagen 101
17563 Jarfalla, SWEDEN

Dear Mr. Sjogren:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AKE SJOGREN	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Tax under Articles 28 and 29	:	
of the Tax Law for the Period July 25, 1979.	:	

Petitioner, Ake Sjogren, Flygarvagen 101, 17563 Jarfalla, Sweden, filed a petition for revision of a determination or for refund of sales and use tax under Articles 28 and 29 of the Tax Law for the period July 25, 1979 (File No. 31279).

On June 15, 1982 petitioner filed a waiver of formal hearing before the State Tax Commission and requested that this matter be decided by the State Tax Commission on the basis of the existing record. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether the purchase of an automobile by a nondomiciliary individual maintaining a residence in New York State at the time of purchase was subject to New York State and local sales tax.

FINDINGS OF FACT

1. On December 26, 1979 petitioner, Ake Sjogren, filed an application for refund of sales and use tax claiming a refund of \$432.00 representing the sales tax paid by him on an automobile purchased on July 25, 1979. The Audit Division denied petitioner's claim in full by letter dated September 26, 1980.

2. Petitioner was a citizen and domiciliary of Sweden. In July, 1979 he and his family came to the United States on a one year assignment to IBM in

Poughkeepsie, New York. Petitioner lived in a rented house in Poughkeepsie until November 14, 1980. At that time petitioner and his family moved back to Sweden and have resided there since.

3. On July 25, 1979 petitioner purchased a 1979 Volvo automobile from Canter's Volvo in Poughkeepsie. He paid \$8,640.00 plus \$432.00 New York State and local sales tax for the automobile. Petitioner took delivery of the automobile in New York and used it during the year he resided in Poughkeepsie. Petitioner indicated that at the end of his work assignment in November, 1980, he intended to have the automobile shipped to Sweden.

CONCLUSIONS OF LAW

A. That section 1117(a) of the Tax Law provides, in part, that the purchase of a motor vehicle will not be subject to sales tax provided that, at the time of taking delivery, the purchaser

- "(1) is a nonresident of this state,
- (2) has no permanent place of abode in this state,
- (3) is not engaged in carrying on in this state any employment, trade, business or profession in which the motor vehicle will be used in this state, and
- (4) prior to taking delivery, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the tax commission may require to assure proper administration of the tax imposed under subdivision (a) of section eleven hundred five."

B. That regulation 20 NYCRR 526.15 defines a permanent place of abode as a dwelling place maintained by a person on other than a temporary or transient basis (see 20 NYCRR 526.15(a)(2) Examples 1-3).

C. That maintaining a residence in New York for a period in excess of one year is not temporary or transient and constitutes a permanent place of abode within the meaning and intent of section 1117(a) of the Tax Law. Therefore,

the purchase of the automobile in New York on July 25, 1979 was subject to New York State and local sales tax (see Matter of Myriam Torre, State Tax Commission, September 20, 1974).

D. That the petition of Ake Sjogren is denied and the denial of refund dated September 26, 1980 is sustained.

DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

Robert W. Bullock
ACTIVE PRESIDENT

Francis R. Kolmg
COMMISSIONER

Michael J. Judd
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Ake Sjogren	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Sales & Use Tax	:	
under Article 28 & 29 of the Tax Law for the	:	
Period 1979.	:	

State of New York
County of Albany

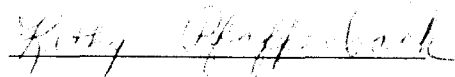
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon Ake Sjogren, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ake Sjogren
Flygarvagen 101
17563 Jarfalla, SWEDEN

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
29th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

