

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

March 26, 1982

Robert W. Van Valkenburg, Paul F. Van Valkenburg and
Charles H. Burgess, Indiv. & as Co-Partners,
T/A Van's Automotive Service
1 Hancock St.
Fort Plain, NY

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 & 1243 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
William B. MacKenzie
42 Church St.
Canajoharie, NY 13317
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT W. VAN VALKENBURG, PAUL F. VAN VALKENBURG	:	DECISION
and CHARLES H. BURGESS, INDIVIDUALLY AND AS	:	
CO-PARTNERS, T/A VAN'S AUTOMOTIVE SERVICE	:	
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, 1974	:	
through December 22, 1976.	:	

Petitioners, Robert W. Van Valkenburg, Paul F. Van Valkenburg and Charles H. Burgess, Individually and as Co-Partners, T/A Van's Automotive Service, One Hancock Street, Fort Plain, New York 13339, 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, 1974 through December 22, 1976 (File No. 23384).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on October 9, 1980 at 10:45 A.M. and continued on October 22, 1980 at 11:00 A.M. Petitioners appeared by William B. MacKenzie, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry Bresler, Esq., of counsel).

ISSUE

Whether the Audit Division properly notified petitioners (purchasers) under the requirements of section 1141(c) of the Tax Law of any sales tax liability owed by the seller of business assets.

FINDINGS OF FACT

1. On December 22, 1976, petitioners purchased the business assets of Carlton Swartz d/b/a Swartz Garage for the sum of \$5,750.00. Petitioners notified the Tax Commission of the impendent purchase on December 10, 1976, the notice having been received by the Tax Commission on December 15, 1976.

2. On December 16, 1976, the Audit Division prepared a Notice of Claim to Purchaser addressed to petitioners at the address as noted on the aforesaid notification stating that a possible claim for unpaid taxes existed. The Audit Division followed its established mailing procedure for the mailing of such notices.

A list of all notices of claim prepared that day was made, a count taken and noted on the mailing record. The notices issued were banded, brought to the mailroom along with the mailing record by the individual who prepared them and sealed, metered and counted by an employee in the mailroom. The mailroom employee then signed the mailing record after verification of the correctness of the count of the mailing pieces. The notices were then rebanded and placed in the registry room along with the mailing record awaiting pickup by another employee for delivery to the post office. The mailing record was signed upon delivery of the notices to the post office and returned to the registry room for pickup the next day by the sender.

3. On June 2, 1977, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against Robert W. Van Valkenburg, Paul F. Van Valkenburg and Charles H. Burgess, Individually and as Co-Partners, T/A Van's Automotive Service for the period March 1, 1974 through December 22, 1976. The Notice asserted tax due of \$16,775.77 plus penalties and interest

and represented petitioners' liability under section 1141(c) of the Tax Law for sales tax due from the seller.

4. On July 24, 1978, the Audit Division adjusted the above Notice to tax due of \$5,750.00, the purchase price of the business assets.

5. Petitioners denied ever having received the Notice of Claim to Purchaser and argued that they therefore proceeded to purchase the automotive business. Petitioners contended that since the Notice of Claim was not effectively mailed, the Notice and Demand issued by the Audit Division is invalid.

CONCLUSIONS OF LAW

A. That section 1141(c) of the Tax Law states in pertinent part that whenever the purchaser shall fail to give notice to the Tax Commission or whenever the Tax Commission shall inform the purchaser that a possible claim for tax exists, any sums of money or other consideration which the purchaser is required to transfer over to the seller shall be subject to a first priority right and lien for any taxes theretofore or thereafter determined to be due from the seller to the state, and the purchaser is forbidden to transfer to the seller any such sums of money to the extent of the amount of the state's claim. Within 180 days (90 days effective January 1, 1978) of the receipt of the notice of the sale from the purchaser, the Tax Commission shall give notice to the purchaser and to the seller of the total amount of any tax which the state claims to be due from the seller to the state, and whenever the Tax Commission shall fail to give such notice to the purchaser within 180 days from receipt of notice of the sale, such failure will release the purchaser from any further obligation to withhold any sums of money which the purchaser is required to transfer over to the seller.

B. That the Audit Division properly notified the purchasers of a possible existing claim on December 16, 1976 as evidenced by the signed mailing record used in its normal office procedure in mailing such notices. A presumption arises that such notice was received by the addressee notified. The mere denial of receipt by petitioners is insufficient to rebut the presumption. (Russell v. State Tax Commission, _____ Misc.2d. _____, November 6, 1981.)

That the Audit Division further met the requirements of section 1141(c) of the Tax Law in that the purchasers were notified of the amount of the state's claim within 180 days.

C. That the petition of Robert W. Van Valkenburg, Paul F. Van Valkenburg and Charles H. Burgess, Individually and as Co-Partners is denied and the Notice and Demand for Payment of Sales and Use Taxes Due as revised on July 24, 1978 by the Audit Division is sustained.

DATED: Albany, New York

MAR 26 1982

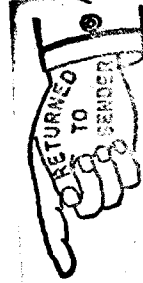
STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Forwarding Time Expired

REASON CHECKED
Unclaimed ☒ Refused
Addressee unknown
Insufficient Address
No such street number
No such office in state
Do not remail in this envelope

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