

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

April 27, 1983

Beverly Automotive City, Inc.
555 Coney Island Ave.
Brooklyn, NY 11218

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, 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
Morris Turetzky
Turetzky, Sternheim Co.
114 Liberty Street
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BEVERLY AUTOMOTIVE CITY, 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 Periods December 1, 1978	:	
through February 28, 1979, March 1, 1979	:	
through May 31, 1979 and June 1, 1979 through	:	
August 31, 1979.	:	

Petitioner, Beverly Automotive City, Inc., 555 Coney Island Avenue, Brooklyn, New York 11218, 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 periods December 1, 1978 through February 28, 1979, March 1, 1979 through May 31, 1979 and June 1, 1979 through August 31, 1979 (File No. 32886).

A small claims 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 June 16, 1982 at 10:45 A.M. Petitioner appeared by Morris Turetzky, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the penalty asserted against petitioner for failure to file sales tax returns monthly should be cancelled.

FINDINGS OF FACT

1. On September 19, 1978, petitioner, Beverly Automotive City, Inc., filed its New York State and Local Sales and Use Tax Return for the quarterly

period June 1, 1978 through August 31, 1978 on which taxable sales were reported as \$304,402.00.

The Tax Compliance Bureau issued notices and demand for payment of sales and use taxes due against petitioner asserting penalty and interest as follows:

<u>Date</u>	<u>Period Ending</u>	<u>Amount Due</u>
September 14, 1979	February 28, 1979	\$ 767.70
November 28, 1979	May 31, 1979	1,016.49
January 14, 1980	August 31, 1979	1,006.11

The foregoing notices were issued for petitioner's failure to file sales tax returns monthly for the above periods. Petitioner was required to file monthly for said periods because taxable sales for the period June 1, 1978 through August 31, 1978 exceeded \$300,000.00.

3. Petitioner's taxable sales never reached \$300,000.00 in any quarter preceeding June 1, 1978 through August 31, 1978 or thereafter.

4. Petitioner filed quarterly sales tax returns for the periods at issue. Petitioner relied on its accountant for the preparation of sales tax returns. Petitioner first became aware of monthly filing requirements when it received the notice issued September 14, 1979.

5. Petitioner timely filed sales tax returns for all preceeding periods.

CONCLUSIONS OF LAW

A. That section 1136(a) of the Tax Law provides that all vendors whose taxable receipts total three hundred thousand dollars or more in any one quarter are required to file monthly sales tax returns in addition to a quarterly return.

That petitioner's taxable sales for the quarterly period ending August 31, 1978 were more than \$300,000.00 and as a result, petitioner was

required to file a part-quarterly return for the first two months of each of the quarters at issue; that said returns were required to be filed within 20 days after the end of each month in accordance with subdivision (b) of section 1136 of the Tax Law.

B. That section 1145(a)(1) of the Tax Law authorizes the imposition of penalty and interest for failure to file a return or pay over any tax when due. Said section also provides for the Tax Commission's remission of penalty and that portion of interest exceeding the statutory minimum in the event that failure to file a return or pay over any taxes was due to reasonable cause.


C. That petitioner's failure to file part-quarterly monthly returns for the periods at issue was due to reasonable cause and not due to willful neglect or intent to disobey the taxing statutes. Accordingly, the penalty is cancelled and interest is reduced to the minimum statutory rate.


D. That the petition of Beverly Automotive City, Inc. is granted and the notices and demand for payment of sales and use taxes due issued September 14, 1979, November 28, 1979 and January 14, 1980 shall be modified accordingly.

DATED: Albany, New York

APR 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Beverly Automotive City, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 2/28/79-11/30/79. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 27th day of April, 1983, he served the within notice of Decision by certified mail upon Beverly Automotive City, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Beverly Automotive City, Inc.
555 Coney Island Ave.
Brooklyn, NY 11218

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
27th day of April, 1983.

David Parchuck

Annice A. 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 :
Beverly Automotive City, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 2/28/79-11/30/79. :

State of New York
County of Albany

David Parchuck, 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 27th day of April, 1983, he served the within notice of Decision by certified mail upon Morris Turetzky the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morris Turetzky
Turetzky, Sternheim Co.
114 Liberty Street
New York, NY 10006

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 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
27th day of April, 1983.

David Parchuck

Quinn R. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

P 389 758 846
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Morris Turetzky</u>	
<u>Turetzky, Sternheim Co.</u>	
Street and No. <u>114 Liberty Street</u>	
P.O., State and ZIP Code <u>New York, NY 10006</u>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 389 758 845
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Beverly Automotive City, Inc.</u>	
<u>555 Coney Island Ave</u>	
Street and No. <u>Brooklyn, NY 11218</u>	
P.O., State and ZIP Code	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982



Tax Appeals Bureau

Date 5/10/83

To _____

Do not remail -

Already mailed to Steinheim.
Also, sent him copies
of envelopes (he doesn't
know why they were
returned by P.O.) K.P.

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



☐ Moved, not forwardable

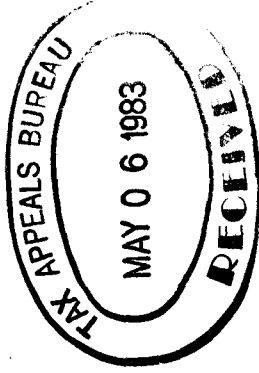
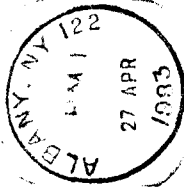
NEW YORK, N.Y. 10004

~~Morris Turetzky
Turetzky, Sternheim Co.
114 Liberty Street
New York, NY 10006~~

CERTIFIED

P 389 58 846

MAIL



MANF

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

April 27, 1983

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555 Coney Island Ave.
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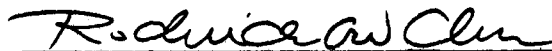
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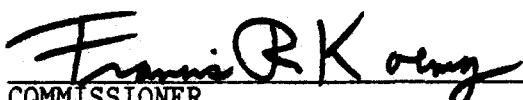
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DATED: Albany, New York

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APR 27 1983


PRESIDENT


COMMISSIONER


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TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
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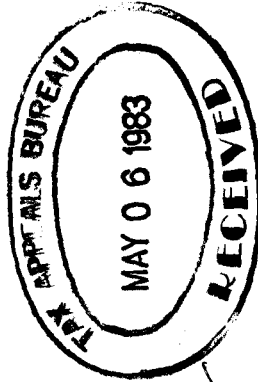
NEW YORK, N.Y. 10004

~~Morris Turetzky
Turetzky, Sternheim & Co.
114 Liberty St, Suite 204
New York, NY 10006~~

CERTIFIED

P 389 758 849

MAIL



MNF