

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

September 28, 1983

Valley Stream Volkswagen, Inc.
c/o Samuel T. Griffin
17 Searington Drive
Syosset, NY 11791

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 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
Sidney N. Solomen
3000 Marcus Ave.
Lake Success, NY 11042
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Valley Stream Volkswagen, 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 9/1/77 - 10/8/80. :

State of New York
County of Albany

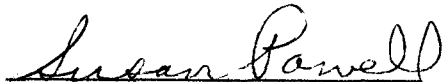
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Valley Stream Volkswagen, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

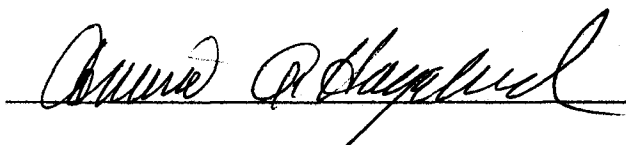
Valley Stream Volkswagen, Inc.
c/o Samuel T. Griffin
17 Searington Drive
Syosset, NY 11791

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
28th day of September, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Valley Stream Volkswagen, 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 9/1/77 - 10/8/80.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Sidney N. Solomen the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sidney N. Solomen
3000 Marcus Ave.
Lake Success, NY 11042


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
28th day of September, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
VALLEY STREAM VOLKSWAGEN, INC.
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 September 1,
1977 through October 8, 1980.

DECISION

Petitioner, Valley Stream Volkswagen, Inc., 56 West Merrick Road, Valley Stream, New York 11580, 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 September 1, 1977 through October 8, 1980 (File No. 32877).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 17, 1983, at 2:45 P.M. Petitioner appeared by Samuel T. Griffin, vice-president. The Audit Division appeared by Paul B. Coburn, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether the penalty and interest assessed against petitioner for the late filing of sales and use tax returns should be abated.

FINDINGS OF FACT

1. On November 26, 1980, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Valley Stream Volkswagen, Inc., assessing a tax due of \$26,318.54 plus penalty and interest of \$8,961.01 for a total due of \$35,279.55 for the period September 1, 1977 through October 8, 1980.

2. As a result of a pre-hearing conference, the Notice was revised to tax due of \$20,094.20 plus penalty and interest. Petitioner protests the assertion of penalty and interest for the late filing of two sales and use tax returns for the periods June 1, 1980 through August 31, 1980 and September 1, 1980 through October 8, 1980.

3. Petitioner's sales and use tax return for the quarterly period June 1, 1980 through August 31, 1980 was filed September 22, 1980 which fell on a Monday. The tax due on this return, however, was not paid until October 7, 1980 when petitioner received the proceeds from the bulk sale of its business.

4. Petitioner's sales and use tax return for the period September 1, 1980 through October 8, 1980 was filed without a remittance on October 18, 1980. The tax indicated due thereon of \$15,950.55 has not been paid to date.

5. Petitioner contended that there was no intent to evade any taxes due the state by reason of the filing of its returns albeit without remittance. Petitioner testified that the return for the period June 1, 1980 through August 31, 1980 was timely filed and the tax was not paid thereon until October 7, 1980 due to a cash shortage. Petitioner offered no explanation as to why the sales tax for the period September 1 through October 8, 1980 had not been paid.

6. Petitioner late filed sales and use tax returns in 1977 and 1978.

CONCLUSIONS OF LAW

A. That petitioner failed to file timely sales and use tax returns for the periods June 1, 1980 through August 31, 1980 and September 1, 1980 through October 8, 1980. A remittance is required to be made with the filing of the sales and use tax return pursuant to section 1137 of the Tax Law.

B. That under section 1145(a)(1) of the Tax Law the Tax Commission may remit the penalty and the interest which is in excess of the statutory interest

rate if it is satisfied that the delay in the late filing of a sales and use tax return was due to reasonable cause. That 20 NYCRR 536.1 provides for the review of the taxpayer's previous compliance record, among other factors, in determining whether reasonable cause exists.

C. That petitioner has failed to show any reasonable cause for not remitting the sales tax collected with the filing of its sales and use tax returns for the periods June 1, 1980 through August 31, 1980 and September 1, 1980 through October 8, 1980. Moreover, petitioner has a past record of not filing timely sales and use tax returns.

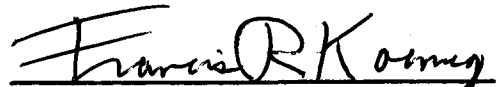
D. That the petition of Valley Stream Volkswagen, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 26, 1980 and revised at the pre-hearing conference is sustained.

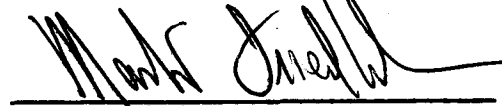
DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

P 481 208 255

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | |
|---------------------------------------------------------------|----|
| Sent to Valley Stream Volkswagen, Inc. | |
| c/o Samuel T. Griffin | |
| Street and No. | |
| 17 Scarrington Drive | |
| P.O., State and ZIP Code | |
| Syosset, NY 11791 | |
| 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 481 208 256

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | |
|---------------------------------------------------------------|----|
| Sent to | |
| Sidney N. Solomon | |
| Street and No. | |
| 3000 Marcus Ave. | |
| P.O., State and ZIP Code | |
| Lake Success, NY 11042 | |
| 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