

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Donald F. Laks :
Officer of Don Laks Volkswagon, Inc. :
& Laks Chevrolet Corp. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period Ended 8/31/82 & 11/30/82. :

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he/she served the within notice of Decision by certified mail upon Donald F. Laks, Officer of Don Laks Volkswagon, Inc. & Laks Chevrolet Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald F. Laks
Officer of Don Laks Volkswagon, Inc. & Laks Chevrolet Corp.
7310 E. Quaker Road
Orchard Park, NY 14127

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 January, 1986.

David Parchuck

Connie A. Hagelund

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
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under Article 28 & 29 of the Tax Law for the :
Period Ended 8/31/82 & 11/30/82. :

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he served the within notice of Decision by certified mail upon Ralph J. Gregg, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ralph J. Gregg
2100 Main Place
Buffalo, NY 14202

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 January, 1986.

David Parchuck

Connie Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

Donald F. Laks
Officer of Don Laks Volkswagon, Inc. & Laks Chevrolet Corp.
7310 E. Quaker Road
Orchard Park, NY 14127

Dear Mr. Laks:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Ralph J. Gregg
2100 Main Place
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| DONALD F. LAKS, OFFICER OF | : | DECISION |
| DON LAKS VOLKSWAGON, INCORPORATED | : | |
| and | : | |
| LAKS CHEVROLET CORPORATION | : | |
| 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 ended | : | |
| August 31, 1982 and November 30, 1982. | : | |

Petitioner, Donald F. Laks, 7310 East Quaker Road, Orchard Park, New York, 14127, 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 ended August 31, 1982 and November 30, 1982 (File No. 46347 and 47811).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on March 14, 1985 at 1:15 P.M., with all briefs to be submitted by May 15, 1985. Petitioner appeared by Ralph J. Gregg, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the State Tax Commission has jurisdiction to conduct an administrative hearing regarding petitioner, Donald F. Laks, with respect to his personal liability for unpaid sales taxes of Don Laks Volkswagon, Incorporated and Laks Chevrolet Corporation and, if so, whether petitioner was a person responsible for the payment of such taxes.

FINDINGS OF FACT

1. On June 20, 1983, the Audit Division issued to petitioner, Donald F. Laks, as officer of Don Laks Volkswagon, Incorporated, a Notice and Demand for Payment of Sales and Use Taxes Due, for the periods ended August 31, 1982 and November 30, 1982 in the amount of \$15,781.63 plus penalty and interest accrued to the date of issuance of the notice.

The notice provided on its face the following explanation as the basis for issuance, together with a detailed breakdown of the amounts assessed for each of the quarterly periods at issue:

"[y]ou are personally liable as a responsible officer of Don Laks Volkswagon Inc. under Sections 1131(1) and 1133 of the Tax Law.

| <u>Period Ending</u> | <u>Tax Due</u> | <u>Penalty Due</u> | <u>Interest Due</u> |
|----------------------|----------------|--------------------|---------------------|
| 08/31/82 | \$5,540.51 | \$664.87 | \$478.25 |
| 11/30/82 | \$10,241.12 | \$1,114.84 | \$641.90 |

'THE TAX ASSESSED HEREIN HAS BEEN ESTIMATED AND/OR DETERMINED TO BE DUE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1138 OF THE TAX LAW AND MAY BE CHALLENGED THROUGH THE HEARING PROCESS BY THE FILING OF A PETITION WITHIN 90 DAYS.'"

2. The above Notice and Demand issued to petitioner (Finding of Fact "1") stems from assessments issued against Don Laks Volkswagon, Incorporated, as a result of that entity's timely filing of sales and use tax returns for the periods at issue, which returns had no remittance of the tax shown as due thereon.

3. On August 20, 1983, the Audit Division issued to petitioner, Donald F. Laks, as officer of Laks Chevrolet Corporation, a Notice and Demand for Payment of Sales and Use Taxes Due, for the period ended November 30, 1982 in the amount of \$20,539.03 plus penalty and interest accrued to the date of issuance of the notice.

The notice provided on its face the following explanation as the basis for issuance, together with a detailed breakdown of the amounts assessed for the quarterly period at issue: "[y]ou are personally liable as a responsible officer of Laks Chevrolet Corporation under section 1131(1) and 1133 of the Tax Law."

| <u>Period Ending</u> | <u>Tax Due</u> | <u>Penalty Due</u> | <u>Interest Due</u> |
|----------------------|----------------|--------------------|---------------------|
| 11/30/82 | \$20,539.03 | \$2,882.39 | \$2,007.56 |

'THE TAX ASSESSED HEREIN HAS BEEN ESTIMATED AND/OR DETERMINED TO BE DUE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1138 OF THE TAX LAW AND MAY BE CHALLENGED THROUGH THE HEARING PROCESS BY THE FILING OF A PETITION WITHIN 90 DAYS.'

4. The above Notice and Demand issued to petitioner (Finding of Fact "3") stems from an assessment issued against Laks Chevrolet Corporation, as a result of that entity's timely filing of a sales and use tax return for the period at issue, which return had no remittance of the tax shown as due thereon.

5. That the amounts of tax, penalty and interest charged to Donald Laks in the notices and demands for payment of sales and use tax due are those which had accrued against the corporate entities up to the date of the issuance of the notices to petitioner.

6. That the Audit Division did not dispute the amounts of tax shown due on the sales and use tax returns filed by the corporations.

7. That petitioner presented no evidence or testimony in support of his petition, relying solely upon the legal argument that under the particular factual circumstances, the State Tax Commission is without authority to hold an administrative hearing to determine petitioner's liability as a person required to collect tax. A determination by this body that no administrative remedy lies in this situation would remove a potential obstacle to judicial action by petitioner.

8. Petitioner submitted proposed findings of fact 1-6 which are substantially incorporated in Findings of Fact 1-6 herein.

CONCLUSIONS OF LAW

A. That where as here, timely and correct returns were submitted lacking only the remittance of tax as shown as due thereon, this Commission is not empowered to determine petitioner's liability as "a person required to collect tax" for the corporation's unpaid sales taxes in an administrative hearing.

[Matter of Parsons v. State Tax Commission, 34 N.Y.2d 190(1974); Matter of William R. Hall v. State Tax Commission, 108 A.D.2d 488 (Third Dept. 1985)].

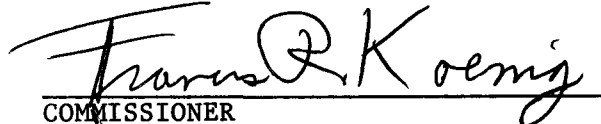
B. That since this Commission does not have authority to determine petitioner's liability at an administrative hearing, the petition is dismissed.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

P 684 313 211

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

| | |
|---|----|
| Sent to <u>Ralph J. Gregg</u> | |
| Street and No. <u>2100 Main Place</u> | |
| P.O., State and ZIP Code <u>Buffalo, N.Y. 14202</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 684 313 210

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

| | |
|---|----|
| Sent to <u>Donald F. Laks</u> | |
| Street and No. <u>Don Laks Volkswagen, Inc.</u> | |
| P.O., State and ZIP Code <u>7310 E. Quaker Rd. Corp</u> | |
| <u>Orchard Park, NY 14127</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

TA-26 (7/85)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
W. A. Harriman Campus
ALBANY, N.Y. 12227

129585
CLAIM CHECK
No.

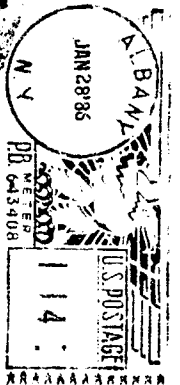
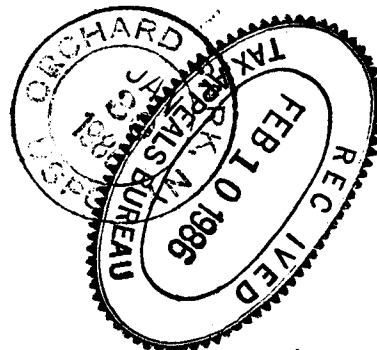
CERTIFIED
P 684 313 210
MAIL

Delivered from
PS Form 3849-A
Oct. 1980

DATE
☐ HOLD
1ST NOTICE
2ND NOTICE
RETURN

Donald F. Laks
Officer of Don Laks Volkswagen, Inc.
& Laks Chevrolet Corp
7310 E. Quaker Road
Orchard Park, NY 14127

MOVED - NOT FORWARDABLE
RETURN TO SENDER



S.T.

REQUEST FOR BETTER ADDRESS

| | | |
|---|---|--------------------------------|
| Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227 | Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227 | Date of Request 2/10/86 |
|---|---|--------------------------------|

Please find most recent address of taxpayer described below; return to person named above.

| | |
|---|----------------------------------|
| Social Security Number | Date of Petition Dec. 1/28/86 |
| Name Donald F. Laks | |
| Address Officer of Don Laks-Volkswagen, Inc. & Laks Chevrolet Corp. 7310 Quaker Road Orchard Park, N.Y. 14127 | |

Results of search by Files

| | |
|---|---------------------------------|
| <input type="checkbox"/> New address: | RP 8483-82 not found fb 2/10/86 |
| <input type="checkbox"/> Same as above, no better address | |
| <input type="checkbox"/> Other: | none not forwardable |

| | | |
|-------------|---------|----------------|
| Searched by | Section | Date of Search |
| | | |

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (7/85)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

W. A. Harriman Campus

ALBANY, N.Y. 12227

CERTIFIED

P 684 313 210

MAIL

NO. 129585

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

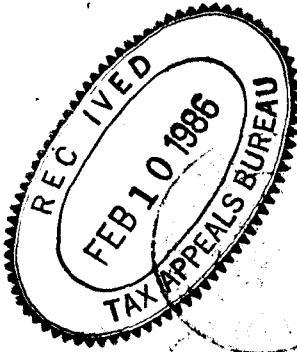
RETURN

Detached from
PS Form 3849-A
Oct. 1980



MOVED - NOT FOR RETURNABLE

Donald F. Laks
Officer of Don Laks Volkswagen, Inc.
& Laks Chevrolet Corp.
7310 E. Quaker Road
Orchard Park, NY 14127



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

January 28, 1986

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Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Ralph J. Gregg
2100 Main Place
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| DONALD F. LAKS, OFFICER OF | : | DECISION |
| DON LAKS VOLKSWAGON, INCORPORATED | : | |
| and | : | |
| LAKS CHEVROLET CORPORATION | : | |
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6. That the Audit Division did not dispute the amounts of tax shown due on the sales and use tax returns filed by the corporations.

7. That petitioner presented no evidence or testimony in support of his petition, relying solely upon the legal argument that under the particular factual circumstances, the State Tax Commission is without authority to hold an administrative hearing to determine petitioner's liability as a person required to collect tax. A determination by this body that no administrative remedy lies in this situation would remove a potential obstacle to judicial action by petitioner.

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A. That where as here, timely and correct returns were submitted lacking only the remittance of tax as shown as due thereon, this Commission is not empowered to determine petitioner's liability as "a person required to collect tax" for the corporation's unpaid sales taxes in an administrative hearing.


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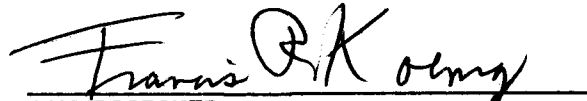
B. That since this Commission does not have authority to determine petitioner's liability at an administrative hearing, the petition is dismissed.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER