

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
South Shore Pontiac Co., Inc. and :
Renato Zonghetti and Frederick Zonghetti, :
Individually :
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 December 1, 1979 through :
September 17, 1982. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Valley Stream Foreign Cars, 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 December 1, 1979 through :
September 17, 1982. :

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 Valley Stream Foreign Cars, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Valley Stream Foreign Cars, Inc.
750 W. Merrick Rd.
Valley Stream, NY 11580

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.

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

David Parchuck

STATE OF NEW YORK

STATE TAX COMMISSION

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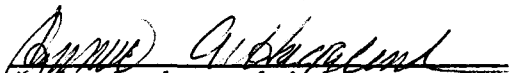
David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he served the within notice of Decision by certified mail upon Alan Richards, the representative of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

Alan Richards
Richards and Witt
100 Ring Rd. W.
Garden City, NY 11530

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.



Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

Valley Stream Foreign Cars, Inc.
750 W. Merrick Rd.
Valley Stream, NY 11580

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, 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
Alan Richards
Richards and Witt
100 Ring Rd. W.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
South Shore Pontiac Co., Inc. and :
Renato Zonghetti and Frederick Zonghetti, :
Individually :

for Revision of a Determination or for Refund of :
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September 17, 1982. :

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 South Shore Pontiac Co., Inc., Renato Zonghetti & Frederick Zonghetti, the petitioner, in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

South Shore Pontiac Co., Inc.
Renato Zonghetti & Frederick Zonghetti
750 W. Merrick Rd.
Valley Stream, NY 11580

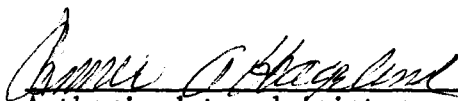
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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.

Page 2

Affidavit of Mailing

Sworn to before me this
28th day of January, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
South Shore Pontiac Co., Inc. and :
Renato Zonghetti and Frederick Zonghetti, :
Individually :
for Revision of a Determination or for Refund of :
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AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Valley Stream Foreign Cars, Inc. :
for Revision of a Determination or for Refund of :
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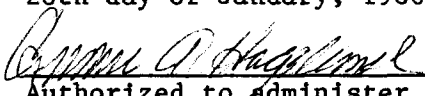
David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he served the within notice of Decision by certified mail upon Alvin Finkle, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alvin Finkle
366 Pearsall Ave.
Cedarhurst, NY 11516

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.


Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

South Shore Pontiac Co., Inc.
Renato Zonghetti & Frederick Zonghetti
750 W. Merrick Rd.
Valley Stream, NY 11580

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, 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
Alvin Finkle
366 Pearsall Ave.
Cedarhurst, NY 11516
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SOUTH SHORE PONTIAC CO., INC. and :
RENATO ZONGHETTI AND FREDERICK ZONGHETTI, :
Individually :
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 December 1, :
1979 through September 17, 1982.

DECISION

In the Matter of the Petition :
of :
VALLEY STREAM FOREIGN CARS, 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 December 1, :
1979 through September 17, 1982.

Petitioners, South Shore Pontiac Co., Inc. and Renato Zonghetti and Frederick Zonghetti, individually, c/o Alvin Finkle, 366 Pearsall Avenue, Cedarhurst, New York 11516 and Valley Stream Foreign Cars, Inc., 750 West Merrick Road, Valley Stream, New York 11580, filed petitions 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 December 1, 1979 through September 17, 1982 (File Nos. 42212, 42213, 42214 and 41299).

A 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 6, 1985 at 1:15 P.M. Petitioners appeared by Alan Richards, Esq. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq. of counsel).

ISSUE

Whether South Shore Pontiac Co., Inc. sold Valley Stream Foreign Cars, Inc. a customer list.

FINDINGS OF FACT

1. Petitioner South Shore Pontiac Co., Inc. ("South Shore") operated a Honda automobile dealership located at 750 W. Merrick Road, Valley Stream, New York.

2. On May 25, 1982, South Shore entered into an agreement with Don Lia and Louis Sollecito which was subsequently assigned to petitioner Valley Stream Foreign Cars, Inc. ("Valley Stream") for the sale of its business assets. The assets set forth in the contract were as follows:

(a) New and unregistered Honda cars, model years 1981 and 1982, and 1982 demonstrator vehicles.

(b) Parts and accessories inventories.

(c) Machinery, equipment, furniture and fixtures. The purchase price of these items was \$150,000.00.

(d) Customer lists, customer sales and service files and the right to use the telephone numbers. The purchase price for these assets was \$650,000.00.

The purchase price for the inventories in (a) and (b) were to be determined at a later time.

3. On September 1, 1982, the Audit Division received a Notification of Sale, Transfer or Assignment in Bulk from Valley Stream regarding the impending purchase of the automobile dealership operated by South Shore. Said notification indicated September 13, 1982 as the scheduled date of sale and listed the sales price as \$150,000.00 for machinery and equipment; \$650,000.00 for customer lists and goodwill, plus inventory at cost per physical count.

4. The Audit Division conducted a field audit of South Shore's books and records. The audit disclosed additional sales and use taxes due of \$50,320.94. South Shore agreed to and paid \$3,713.94. The Audit Division also verified that bulk sales tax of \$10,875.00 had been paid on the machinery, equipment, and fixtures transferred in sale of the business. The balance of the taxes determined due on audit (\$47,125.00) represented the tax computed on \$650,000.00 of the sales price allocated to customer lists, customer sales and service files and the right to use telephone numbers. The Audit Division took the position that such transfer constituted the sale of an information service under section 1105(c)(1) of the Tax Law.

5. On November 19, 1982, as a result of the above audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against South Shore covering the period December 1, 1979 through September 17, 1982 for taxes due of \$47,125.00, plus interest of \$749.29, for a total of \$47,874.29. Notices for the same amount were issued against Frederick Zonghetti and Renato Zonghetti, individually and as officers of South Shore. On the same date, an identical notice was also issued against Valley Stream which represented its liability as purchaser in accordance with section 1141(c) of the Tax Law.

6. Honda automobile franchises are not salable. They are personal service contracts issued by the franchisor (American Honda Corp.) to an individual and that individual cannot sell, transfer or assign the franchise, but could only terminate the franchise. American Honda Corp. would then appoint the purchaser and issue a new franchise for that location. In this way American Honda Corp. could control dealer selection. In order to protect that right, it did not allow a seller or a buyer to assign an economic value to the franchise.

American Honda Corp. required that a copy of the contract of sale be submitted with an application for a Honda franchise even though it was not a party to the contract. Since American Honda Corp. did not acknowledge or recognize the goodwill factor in the transfer of a dealership, it was the trade practice to refer to goodwill under a different nomenclature. It was customary to use such terms as leasehold improvements, sales and service files or the right to use telephone numbers.

7. The contract between South Shore and Valley Stream used the above terms to describe the value assigned to the franchise. However, at the time petitioners were to sign the contract, South Shore objected to the use of "leasehold improvements" because its books and records did not show any significant leasehold improvements. Consequently, the attorneys for petitioners arbitrarily crossed out the word "leasehold improvements" and inserted "customer lists".

8. Valley Stream showed the amount of \$650,000.00 on its corporation tax returns under leasehold improvements. It did not, however, deduct for depreciation since it was considered goodwill.

9. South Shore did not transfer any customer lists to Valley Stream.

CONCLUSIONS OF LAW

A. That the amount of \$650,000.00 designated in the contract of sale between petitioners as customer lists, sales and service files and the right to use telephone numbers was actually the value attributable to the Honda franchise or goodwill. Goodwill is an intangible asset and was not subject to the imposition of sales or use tax.

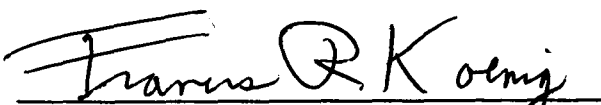
B. That the petitions of South Shore Pontiac Co., Inc., Renato Zonghetti and Frederick Zonghetti, individually and Valley Stream Foreign Cars, Inc. are granted and the notices of determination and demand for payment of sales and use taxes due issued November 19, 1982 are cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER