

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
TAK WING TAM	:	
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, 1992 through May 31, 1995.	:	
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In the Matter of the Petition	:	DETERMINATION
of	:	DTA NOS. 817213
XIAN MING RONG	:	AND 817214
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, 1992 through May 31, 1995.	:	

Petitioner, Tak Wing Tam, 288 East 2nd Street, Apt. 1F, 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 period September 1, 1992 through May 31, 1995.

Petitioner, Xian Ming Rong, 39-15 Main Street, #L100, Flushing, New York 11354, 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, 1992 through May 31, 1995.

A hearing was commenced before Roberta Mosley Nero, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on March

20, 2000 at 10:30 A.M., continued at the same offices on June 12, 2000 at 11:45 A.M. and continued to conclusion at the same offices on August 30, 2000 with all briefs to be filed by January 31, 2001, which date commenced the six-month period for issuance of this determination. After the hearing, this matter was transferred to Administrative Law Judge Arthur S. Bray for issuance of a determination. Petitioners Tak Wing Tam and Xian Ming Rong appeared by Gurtu & McGoldrick, LLP (Chat Gurtu, Esq., of counsel) at the hearing on March 20, 2000. At the hearing on June 12, 2001, petitioner Tak Wing Tam appeared *pro se* and petitioner Xian Ming Rong continued to appear by Gurtu & McGoldrick, LLP (Chat Gurtu, Esq., of counsel). At the hearing on August 30, 2000, petitioner Tak Wing Tam appeared *pro se* and petitioner Xian Ming Rong did not appear either in person or by a representative. The Division of Taxation appeared by Barbara G. Billet, Esq. (Robert A. Maslyn, Esq., of counsel). After review of the evidence and arguments presented, Arthur S. Bray, Administrative Law Judge, renders the following determination.

ISSUES

I. Whether the petition of Xian Ming Rong should be amended to include the period June 1, 1994 through May 31, 1995.

II. Whether the Audit Division correctly determined that additional sales and use taxes were due based upon an examination of available books and records and information from suppliers.

III. Whether petitioners are liable for the sales and use taxes due from New Da Sing Building Supply, Inc. as persons responsible for the collection and payment of sales tax pursuant to Tax Law §§ 1131 and 1133.

IV. Whether the documents executed upon the sale of New Da Sing Building Supply, Inc. absolve petitioners of responsibility for the sale and use taxes due from the corporation.

V. Whether the Division of Taxation is required to collect sales and use taxes from the successor corporation Great Da Sing Building Supply, Inc. or from the other officers of the corporation either prior to or simultaneously with seeking to collect the tax from petitioners.

FINDINGS OF FACT

1. New Da Sing Building Supply, Inc. (“the corporation”) was a firm which sold building supplies at the wholesale and retail level. The corporation was located in Flushing, New York.

2. In September 1993, the Division of Taxation (“Division”) assigned an auditor to perform an audit of the corporation. At this time, she went to the business premises to observe what the corporation sold and what inventory it had on hand. Thereafter, she was advised by her supervisor that the audit was on hold until further notice. In August 1995, the auditor was told to proceed with the audit and to send out appointment letters. She does not know why the case was on hold.

3. In a letter dated August 7, 1995, the Division advised the corporation that it had been scheduled for a field audit at the corporation’s office on August 30, 1995 at 9:30 A.M. The audit was to be for the period September 1, 1992 through May 31, 1995. The letter requested that the corporation make available all of its books and records pertaining to its tax liability for the period under audit including journals, ledgers, sales invoices, purchase invoices, cash register tapes, Federal income tax returns, payroll records and exemption certificates.

4. In November 1995, the auditor met with the corporation’s representative, Mr. Steven Wei. At this time, most of the records requested were produced. However, the representative did not produce a purchase journal, cash register tapes or all of the exemption documents.

5. The exemption documents which were offered for examination presented difficulties. The auditor found that some exemption documents were not properly completed and some were not available. There were times when the corporation claimed that a sale was nontaxable but an exemption document was not provided. There was also an occasion when the corporation claimed that a sale was nontaxable but the auditor was not able to match the exemption document with the invoice.

6. The auditor made additional requests for records in November 1995 and April 1995. However, she never received a purchase journal, cash register tapes or complete group of exemption documents which would have permitted her to match them with the invoices.

7. In the course of the audit, the corporation's representative presented a schedule of purchases. However, the purchases on the schedule did not correspond with the purchases reported on the Federal income tax returns. That is, the purchases reported on the Federal income tax returns were approximately \$600,000.00 greater than the purchases reflected on the books of the corporation. The auditor requested that the corporation's representative reconcile the difference in the purchases. However, she never received any information regarding the difference. The auditor then sent third party verification letters to the corporation's suppliers to verify purchases. Not all of the suppliers responded. However, the responses which were received indicated that the records of the corporation failed to disclose that there were additional purchases in the amount of \$2,076,909.08 during the audit period. The foregoing deficiencies led the auditor to conclude that the corporation's records were inadequate to conduct a detailed audit.

8. The auditor focused on the corporation's sales and purchases. The auditor analyzed the corporation's sales for the months of August 1993 and December 1994 and concluded that

additional tax was due because of disallowed nontaxable sales in the amount of \$19,199.80. The auditor found that total amount of nontaxable sales for the same period of time was \$261,396.12. Thereafter, she divided the tax due on the disallowed nontaxable sales by the total amount of nontaxable sales during the same period of time in order to calculate an error rate of 7.345 percent. This error rate was then multiplied by the total amount of the corporation's non-taxable sales according to the sales journal resulting in tax due of \$176,049.10.

9. During the audit, the auditor and the team leader asked the corporation's representative if there was a problem using the randomly selected months of August 1993 and December 1994. The corporation's representative replied that he did not have any difficulty with the months selected.

10. The auditor applied a weighted average mark-up, which was calculated from the corporation's Federal income tax returns, to the additional purchases found on audit of \$2,076,909.08 to determine that there were additional sales in the amount of \$2,745,258.42. The additional sales were considered taxable and multiplied by the applicable sales tax rate to determine that additional tax was due in the amount of \$226,485.73.

11. On the basis of the foregoing, the total amount of tax found due on audit was \$402,534.83.

12. The auditor determined that Tak Wing Tam was a responsible officer of the corporation on the basis of a number of factors. Mr. Tam signed the corporation's sales and use tax returns as president. The corporation's Federal income tax returns show that Mr. Tam owned approximately 31 percent of the business making him the single largest shareholder. The returns also show that he devoted 100 percent of his time to the business and was compensated for his work. In addition, a responsible officer questionnaire, which was completed by the corporation's

representative, showed that Mr. Tam signed checks in the ordinary course of business, that his duties and powers included managing the operation and contracts on behalf of the corporation and that he was actively involved in the financial affairs of the corporation. The questionnaire also showed that Mr. Tam had the authority to sign consents extending periods of limitation, sign a power of attorney form for the business, sign consents fixing tax, sign deferred payment agreements, hire and fire employees, negotiate loans, borrow money for the business and guarantee business loans.

13. The auditor also concluded that Xian Ming Rong was a responsible officer of the corporation on the basis of a questionnaire which showed, among other things, that Mr. Rong was vice-president of the corporation, signed checks in the ordinary course of business, managed the operation and contracts on behalf of the corporation and was actively involved in the financial affairs of the corporation. The questionnaire also showed that Mr. Rong had the authority to negotiate with the Tax Department, sign consents extending periods of limitation, sign a power of attorney form for the business, sign consents fixing tax, sign deferred payment agreements, hire and fire employees, negotiate loans, borrow money for the business and guarantee business loans. The auditor also noted that the corporation's Federal income tax returns showed that Mr. Rong owned approximately 21 percent of the stock of the corporation, devoted 100 percent of his time to the business and was compensated for his efforts.

14. On the basis of the foregoing, the auditor caused notices of determination to be issued to the corporation and to Tak Wing Tam and Xian Ming Rong as responsible officers.

15. The Division issued a Notice of Determination (L-013576865) to Tak Wing Tam, dated May 27, 1997, which assessed a deficiency of sales and use tax for the period September 1, 1992 through May 31, 1994 in the amount of \$318,515.33 plus interest in the amount of

\$177,310.54 and penalty in the amount of \$127,406.16 for a balance due of \$623,232.03. The Division also issued a Notice of Determination (L-014019682), dated September 2, 1997, to Tak Wing Tam which assessed a deficiency of sales and use tax for the period June 1, 1994 through May 31 1995 in the amount of \$84,019.50 plus interest in the amount of \$31,932.77 and penalty in the amount of \$33,607.80 for a balance due of \$149,560.07.

16. The Division issued a Notice of Determination (L-013576863) to Xian Ming Rong, dated May 27, 1997, which assessed the same amount of tax, penalty and interest which had been assessed against Tak Wing Tam in the notice which was issued to him in May 1997. The Division also issued a Notice of Determination (L-014019684), dated September 2, 1997, to Xian Ming Rong which assessed a deficiency of tax in the amount of \$84,019.50 plus penalty and interest for the period June 1, 1994 through May 31, 1995.

17. An omnibus penalty was assessed on each of the notices based upon an underreporting of more than 25 percent of the amount that should have been reported as due.

18. In a Conciliation Order dated April 23, 1999, all quarters assessed against Mr. Tam by assessment number L-013576865 were canceled except for the quarter ending May 31, 1994 resulting in tax due in the amount of \$30,747.01 plus penalty and interest. Assessment L-0104019682 was sustained in full. With respect to Notice of Determination L-013576863 issued to Mr. Rong, the first six quarters were canceled. The assessment for the quarter ending May 31, 1994 was sustained. No other adjustments were made to the assessments issued to Mr. Rong.

19. The caption of the petition filed on behalf of Tak Wing Tam sought a redetermination of a deficiency for the period September 1, 1992 through May 31, 1994. However, the petition included a conciliation order and a letter from a conciliation conferee which made a reference to the period June 1, 1994 through May 31, 1995.

20. The caption of the petition filed on behalf of Xian Ming Rong also sought a redetermination of a deficiency for the period September 1, 1992 through May 31, 1994. Further, the petition only refers to Notice L-013576863. However, the petition included a copy of a letter from a conciliation conferee which made reference to the period June 1, 1994 through May 31, 1995.

21. In each instance, the petitions challenged the conclusion that they were responsible officers of the corporation. The petitions did not question the method of determining the amount of tax due.

22. At the outset of the hearing, petitioners sought to amend their petition to challenge both assessments issued to each petitioner. The Division did not oppose the amendment of Mr. Tam's petition and his motion to amend was granted. The Division did oppose the motion to amend the petition of Mr. Rong on the basis that the petition did not mention the period June 1, 1994 through May 31, 1995. The Administrative Law Judge granted Mr. Tam's motion and reserved decision on the motion made on behalf of Mr. Rong. The Administrative Law Judge then asked the parties to address the jurisdictional issue in their briefs.

23. There were four shareholders of the corporation. They held the stock in the ratio of 6, 5, 4 and 4. When they organized, Mr. Tam held approximately 31 percent of the stock and was made the president of the corporation because he was the largest shareholder.

24. The duties of the officers were decided at a meeting of shareholders. It was Mr. Rong's duty to order the hardware for the business. Mr. Tam ordered the lumber. At the end of the month, the four principals reviewed the corporation's debts and decided which creditors would be paid. The bookkeeper was then authorized to prepare the appropriate check.

25. Mr. Tam and Mr. Wong each had the authority to sign checks. However, when Mr. Tam would not be present, he would sign seven or eight checks and instruct the bookkeeper to issue the checks as needed.

26. The bookkeeping functions of the business were performed by Ms. Janicy Mung. Ms. Mung prepared the payroll checks, invoices and checks to suppliers. Another officer and stockholder, Mr. Tran, handled the cash and made the deposits to the bank. Mr. Tran gave the data he collected to Ms. Mung. Mr. Rong also supplied information that Ms. Mung used to compile and prepare the corporation's records. At the end of the month, Ms. Mung produced a report for the shareholders showing how much money was received and how much money was spent.

27. When the bookkeeper finished the year end report, it would be given to the corporation's accountant, Mr. Wei, who would then prepare the tax return. The tax return was then given to the bookkeeper who would deliver it to Mr. Tam. She would also tell Mr. Tam how much money the corporation owed. Mr. Tam just signed what was given to him because he believed that the accountant took care of the tax returns.

28. If he wished, Mr. Tam could have reviewed the books and records of the corporation at any time. However, he made it a practice to just examine what Ms. Mung had prepared for him.

29. On June 4, 1996, the corporation was sold to Mr. Wong who began operating the business under the name Great Da Sing Building Supply, Inc. The telephone number, facsimile number and addresses remained the same. The fourth paragraph of the shareholder buy-out agreement provided that "[t]he liabilities and obligations of the corporation have been fully disclosed to all the shareholders and each shareholder is fully aware of the conditions of the

corporation, the highest bidder, or bidder as the case may be, shall assume all the liabilities of the corporation.” A separate document, also dated June 4, 1996, states that New Da Sing Building Supply, Inc. shall assume all liabilities or guarantees entered into on the behalf New Da Sing Building Supply, Inc. by, among others, Mr. Tam and Mr. Rong. In another document, New Da Sing Building Supply, Inc. agreed to indemnify and hold Mr. Tam harmless for any and all tax and business liabilities incurred by Mr. Tam as a result of the operation of the corporation.

30. On June 18, 1996, Mr. Tam executed a Receipt and Release in which he acknowledged receipt of \$24,210.00 leaving a balance due of \$30,000.00 and, among other things, agreed to release the corporation of any claims.

SUMMARY OF THE PARTIES' POSITIONS

31. Mr. Tam argues that using the months of August 1993 and December 1994 as test periods was unfair because these months were very busy. He also argues that the corporation still exists and that the Division should be trying to collect the tax from it. Mr. Tam also contends that the Division should be trying to collect tax from the remaining partners. Mr. Tam notes that many documents only have a space for one signature for the company and wonders why there isn't a place for two or more spaces. Lastly, Mr. Tam notes that there was a sale of the business which released all of the shareholders of New Da Sing Building Supply, Inc.

32. In its brief, the Division argues that the use of an estimated method to determine the amount of tax due was warranted because the corporation failed to produce complete and sufficient books and records. It is further argued that petitioners were responsible officers of New Da Sing Building Supply, Inc. and that the evidence that they offered is insufficient to warrant an adjustment to the notices. The Division contends that the Division of Tax Appeals

has no jurisdiction to review a statutory notice not listed in the petition and that petitioners have failed to show reasonable cause for the abatement of penalties.

CONCLUSIONS OF LAW

A. The first question presented is whether to grant the motion to amend the petition of Xian Ming Rong to include the period June 1, 1994 through May 31, 1995. The Division of Tax Appeals is an adjudicatory body of limited jurisdiction (*Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Dept. of Taxation & Fin. v. Tax Appeals Tribunal*, 151 Misc 2d 326, 573 NYS2d 140). Its powers are limited to those conferred by its authorizing statute (*id.*). Tax Law § 2008 provides:

All proceedings in the division of tax appeals shall be commenced by the filing of a petition with the division of tax appeals protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund . . . or any other notice which gives a person the right to a hearing in the division of tax appeals under this chapter or other law.

As set forth above, the jurisdiction of the Division of Tax Appeals is premised on the filing of a petition protesting a notice which gives a person a right to a hearing; as a consequence, the scope of the jurisdiction is confined by the notice and the petition of that notice (*see, e.g., Matter of Dreisinger*, July 20, 1989). The parties to a proceeding cannot confer jurisdiction on the Division of Tax Appeals to decide matters outside the scope of its authority.

B. The answer of the Division shows that two Conciliation Orders pertaining to Xian Ming Rong, dated April 23, 1999, were issued by the Bureau of Conciliation and Mediation Services. One Conciliation Order pertained to Notice L-013576863 and the second concerned L-014019684. The caption of the petition filed on behalf of Mr. Rong refers to the period

September 1, 1992 through May 31, 1994. Further, the petition only refers to Notice L-013576863. However, the petition includes a copy of a letter from a Conciliation Conferee to Mr. Rong referring to a Conciliation Order pertaining to the period June 1, 1994 through May 31, 1995. Under the circumstances, it is concluded that Mr. Rong's petition encompassed a challenge to the audit for the period June 1, 1994 through May 31, 1995 and the failure to include this period on the face of the petition was a mere oversight. As was the case with Mr. Tam, the attachment was sufficient to constitute a timely protest of the Notice for the period June 1, 1994 through May 31, 1995. Therefore, the motion to amend the petition of Xian Ming Rong to include the period June 1, 1994 through May 31, 1995 is granted.

C. It is well established that every person required to collect tax must maintain and make available for audit records sufficient to verify all transactions in a manner suitable to determine the correct amount of tax due (Tax Law § 1135[a]; 20 NYCRR 533.2[a]). Failure to maintain and make available such records, or the maintenance of inadequate records, will result in the Division's estimating tax due (Tax Law § 1138[a]; *see, Matter of Ristorante Puglia, Ltd. v. Chu*, 102 AD2d 348, 478 NYS2d 91, 93; *Matter of Surface Line Operators Fraternal Org. v. Tully*, 85 AD2d 858, 446 NYS2d 451, 452). To determine the adequacy of a taxpayer's records, the Division must first request and thoroughly examine the taxpayer's books and records for the entire period of the proposed assessment. The purpose of such an examination is to determine whether the records are so insufficient as to make it virtually impossible for the Division to verify taxable sales receipts and conduct a complete audit (*Matter of King Crab Rest. v. State Tax Commn.*, 134 AD2d 51, 522 NYS2d 978).

When a taxpayer's records are inadequate, the Division may select an audit method reasonably calculated to reflect the sales and use taxes due (Tax Law § 1138[a][1]; *see, Matter*

of Grant v. Joseph, 2 NY2d 196, 206, 159 NYS2d 150, 157, *cert denied* 355 US 869). It is only necessary that sufficient evidence be produced to demonstrate that a rational basis existed for the auditor's calculations (*Matter of Grecian Square v. State Tax Commn.*, 119 AD2d 948, 501 NYS2d 219). The burden is then placed upon petitioner to show, by clear and convincing evidence, that the audit method employed or the tax assessed was unreasonable (*Matter of Meskouris Bros. v. Chu*, 139 AD2d 813, 526 NYS2d 679; *Matter of Surface Line Operators Fraternal Org. v. Tully*, 85 AD2d 858, 446 NYS2d 451).

The corporation received an audit appointment letter specifying the sales tax records requested for audit. In response, the corporation failed to produce a purchase journal, cash register tapes or a complete group of exemption documents. In the course of the audit, the auditor noted that the amount of purchases reported on the Federal income tax returns was approximately \$600,000.00 higher than the purchases reflected on the books of the corporation. Further, responses from the corporation's suppliers indicated that the corporation's actual purchases were \$2,076,909.08 greater than that which was reflected on the books of the corporation. On the basis of the foregoing, it is clear that the corporation's records were inadequate to conduct a complete audit and that the Division was warranted in utilizing an indirect audit method.

D. Where, as here, the Division seeks to determine a taxpayer's sales tax liability on the basis of an indirect audit method, the methodology selected must be reasonably calculated to reflect the taxes due (*Matter of Ristorante Puglia, Ltd. v. Chu, supra*; *Matter of W.T. Grant Co. v. Joseph*, 2 NY2d 196, 159 NYS2d 150, 157, *cert denied* 355 US 869, 2 L Ed 2d 75). However, exactness in the outcome of the audit method is not required (*Matter of Markowitz v. State Tax Commn.*, 54 AD2d 1023, 388 NYS2d 176, 177, *affd* 44 NY2d 684, 405 NYS2d

454; *Matter of Lefkowitz*, Tax Appeals Tribunal, May 3, 1990). The burden rests with the taxpayer to show by clear and convincing evidence that the methodology was unreasonable or that the amount assessed was erroneous (*Matter of Meskouris Bros. v. Chu*, 139 AD2d 813, 526 NYS2d 679; *Matter of Surface Line Operators Fraternal Org. v. Tully, supra*).

E. The record clearly establishes a rational basis for the audit methodology. In view of the fact that many exemption documents were unavailable or that it was difficult to match certain exemption documents with a sale, the use of a test period to determine the amount of tax due on disallowed nontaxable sales was warranted. Further, the failure of the corporation to record its purchases warranted contacting the corporation's suppliers to determine the actual amount of inventory which was acquired. It was also rational to utilize a markup based upon the corporation's Federal income tax return.

F. Petitioner's have not shown that the audit methodology was unreasonable. In this case, the Division utilized the months of August 1993 and December 1994 to analyze the corporation's nontaxable sales. Mr. Tam's argument that the use of August 1993 and December 1994 was unfair because these months were busy does not warrant any change in the audit results. The months selected were used to calculate an error rate on disallowed nontaxable sales. The error rate was then applied to the total amount of the corporation's nontaxable sales. It follows that the absolute level of sales during these months was not determinative of the amount of tax due.

G. Tax Law § 1133(a) imposes upon any person required to collect the tax imposed by Article 28 of the Tax Law personal liability for the tax imposed, collected or required to be collected. A person required to collect tax is defined to include, among others, corporate

officers and employees who are under a duty to act for such corporation in complying with the requirements of Article 28 (Tax Law § 1131[1]).

H. The holding of corporate office does not automatically impose tax liability upon an office holder (*Chevlowe v. Koerner*, 95 Misc 2d 388, 407 NYS2d 427). Rather, the resolution of whether a person is responsible for collecting and remitting sales tax for a corporation so that the person would have personal liability for the taxes not collected or paid depends on the facts of each case (*Matter of Cohen v. State Tax Commn.*, 128 AD2d 1022, 513 NYS2d 564; *Stacy v. State*, 82 Misc 2d 181, 368 NYS2d 448). The Commissioner's regulations examine whether the person is authorized to sign the corporation's tax returns, is in charge of maintaining corporate records, or is responsible for managing the corporation (20 NYCRR 526.11[b][2]). In *Matter of Constantino* (Tax Appeals Tribunal, September 27, 1990), the Tax Appeals Tribunal stated:

"The question to be resolved in any particular case is whether the individual had or could have had sufficient authority and control over the affairs of the corporation to be considered a responsible officer or employee. The case law and the decisions of this Tribunal have identified a variety of factors as indicia of responsibility: the individual's status as an officer, director, or shareholder; authorization to write checks on behalf of the corporation; the individual's knowledge of and control over the financial affairs of the corporation; authorization to hire and fire employees; whether the individual signed tax returns for the corporation; the individual's economic interest in the corporation" [citations omitted] (*Matter of Constantino, supra*).

I. The record clearly supports the conclusion that petitioner Tak Wing Tam was a person required to collect and pay over sales and use taxes on behalf of the corporation. During the period in issue, petitioner was the president of the corporation, signed checks on behalf of the corporation, had control over the financial affairs of the corporation, was authorized to hire and fire employees and signed tax returns for the corporation.

J. Petitioner Xian Ming Rong was also a person required to collect and pay over sales and use taxes on behalf of the corporation. The record shows that Mr. Rong was the vice-president of the corporation and that he similarly had the authority to sign checks on behalf of the corporation, had control over the financial affairs of the corporation and had the authority to hire and fire employees.

K. Petitioner Tam argues that the Division should be trying to collect the tax from the successor company, Great Da Sing Building Supply, Inc. This argument is without merit. Regardless of the liability which may be imposed upon a successor corporation (*see*, Tax Law §1141[c]), the liability at issue in this matter is imposed by statute on petitioners personally (Tax Law § 1133[a]) and arose before the business was sold. The agreements between petitioners and other parties may not abrogate this liability. In the same vein, petitioners' claim that there were other individuals who also owned shares of stock in the corporation and held corporate offices officer does not negate petitioners' own responsibility for the amounts in issue (*see, Matter of Phillips*, Tax Appeals Tribunal, May 11, 1995; Tax Law § 1133[a]). The record contains no evidence to establish that petitioners lacked authority to act on the corporation's behalf as officers and shareholders, or that they were thwarted or prevented from acting through no fault of their own. Accordingly, the Division's assessments of personal liability for the amounts at issue herein against petitioners are sustained.

L. Since petitioners have not raised an issue regarding penalties, this matter will not be discussed.

M. The petitions of Tak Wing Tam and Xian Ming Rong are denied.

DATED: Troy, New York
July 26, 2001

/s/ Arthur S. Bray
ADMINISTRATIVE LAW JUDGE