

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sik Ng & Yuk Sheung Moy Lau :
for Redetermination of Deficiencies or for Refund :
of New York State and New York City Income Tax :
under Articles 22 and 30 of the Tax Law and New :
York State Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years 1974 :
through 1976. :
:

AFFIDAVIT OF MAILING

State of New York
County of Albany

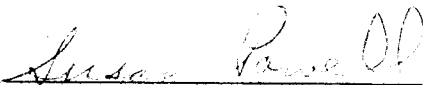
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Sik Ng & Yuk Sheung Moy Lau, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sik Ng & Yuk Sheung Moy Lau
98-21 65th Ave. #1D
Rego Park, NY 11374

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
ALBANY, NEW YORK 12227

September 28, 1983

Sik Ng & Yuk Sheung Moy Lau
98-21 65th Ave. #1D
Rego Park, NY 11374

Dear Mr. & Mrs. Lau:

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) 690, 722 & 1312 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SIK NG LAU and YUK SHEUNG MOY LAU	:	DECISION
	:	
for Redetermination of Deficiencies or for	:	
Refund of New York State and New York City	:	
Income Tax under Articles 22 and 30 of the Tax	:	
Law and New York State Unincorporated Business	:	
Tax under Article 23 of the Tax Law for the	:	
Years 1974 through 1976.	:	

Petitioners, Sik Ng Lau and Yuk Sheung Moy Lau, his wife, 98-21 65th Avenue, Apt. 1-D, Rego Park, New York 11374, filed a petition for redetermination of deficiencies or for refund of New York State and New York City Income Tax under Articles 22 and 30 of the Tax Law and New York State Unincorporated Business Tax under Article 23 of the Tax Law for the years 1974, 1975 and 1976 (File Nos. 26487, 26488 and 27321).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 6, 1981 at 9:30 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq., (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioners properly computed their New York State and New York City personal income tax and New York State unincorporated business tax for the years 1974, 1975 and 1976.

FINDINGS OF FACT

1. Petitioners, Sik Ng Lau and Yuk Sheung Moy Lau, his wife, timely filed New York State Income Tax Returns for 1975 and 1976. For 1975 they used form IT-200 (Short Form) and for 1976 they used form IT-201/208 (New York State

Income Tax Resident Return with New York City Personal Income Tax and Nonresident Earnings Tax).

2. Petitioner Sik Ng Lau timely filed an individual 1974 return using form IT-200.

3. On the 1975 return petitioner Sik Ng Lau stated he was a restaurant worker and on the 1976 return he reported he was a clerk. Actually, at all times in issue, herein, he and his father, Woo Kuey Lau, were the sole stockholders in the Lon Jing Restaurant, Inc.

4. Petitioner Yuk Sheung Moy Lau at all times in issue, herein was a seamstress.

5. Petitioner Sik Ng Lau for the year 1974 reported New York income of \$4,054.46.

6. Petitioners jointly reported New York income of \$5,435.71 for 1975 and \$7,769.71 for 1976.

7. Petitioner Sik Ng Lau executed a Consent Fixing the Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes for the taxable year ending December 31, 1974 until any time on or before April 15, 1979.

8. On March 5, 1979, the Audit Division issued a Notice of Deficiency against petitioner Sik Ng Lau imposing additional income taxes plus penalty and interest due for the year 1974 as follows:

Tax Deficiency	\$ 345.31
Penalty and/or Interest	131.85
Balance Due	<u>\$ 477.16</u>

The accompanying Statement of Audit changes dated January 19, 1979 asserts:

Personal Income Tax Due N.Y.S.	\$ 345.31
Penalty 685(b)	17.27
Plus Interest	

9. On March 5, 1979 the Audit Division issued a Notice of Deficiency against petitioner Yuk Sheung Moy Lau imposing additional income taxes plus penalty and interest due for the year 1974 as follows

Tax Deficiency	\$ 53.63
Penalty and/or Interest	20.48
Balance Due	<u>\$ 74.11</u>

The accompanying Statement of Audit changes dated January 19, 1979 asserts:

Personal Income Tax Due N.Y.S.	\$ 53.63
Penalty 685(b)	2.68
Plus Interest	

10.(a) On March 5, 1979 the Audit Division issued a Notice of Deficiency against petitioners imposing additional income taxes plus penalty and interest due for the year 1975 as follows:

Tax Deficiency	\$ 639.52
Penalty and/or Interest	189.84
Balance Due	<u>\$ 829.36</u>

The accompanying Statement of Audit Changes dated January 19, 1979 asserts in part:

Personal Income Tax Due, N.Y.S.	\$ 639.52
Penalty 685(b)	31.98
Plus Interest	

10.(b) On March 5, 1979 the Audit Division issued a Notice of Deficiency against petitioner Sik Ng Lau imposing unincorporated business tax plus penalty and interest for the year 1975 as follows:

Tax Deficiency	\$ 123.75
Penalty and/or Interest	90.59
Balance Due	<u>\$ 214.34</u>

The accompanying Statement of Audit Changes dated January 19, 1979 asserts in part:

Unincorporated Business Tax	123.75
Penalty 685(b)	6.19
Penalty 685(a)(1)	27.84
Penalty 685(a)(2)	20.41
Penalty 685(c)	5.61
Plus Interest	

11. On March 5, 1979 the Audit Division issued a Notice of Deficiency against petitioner Sik Ng Lau imposing additional income taxes plus penalty and interest due for the year 1976 as follows:

Tax Deficiencies	\$1,538.29*
Penalty and/or Interest	362.08
Balance Due	<u>\$1,900.37</u>

*At the hearing this asserted deficiency was reduced by the Audit Division to the sum of \$1,320.04 plus penalty and/or interest.

The accompanying Statement of Audit Changes dated January 19, 1979 asserts:

Personal Income Tax Due, N.Y.S.	\$ 812.87
Penalty 685(b)	40.64
Personal Income Tax Due, N.Y.C.	288.92
Penalty 685(b)	14.45
Unincorporated Business Tax	218.25
Penalty 685(b)	10.91
Penalty 685(a)(1)	47.89
Penalty 685(a)(2)	22.34
Penalty 685(c)	9.64
Plus Interest	

12. Because of the lack of adequate books and records, the audit herein was conducted by the cash availability method of income reconstruction.

13. Originally petitioners had one Jeffrey Foong, C.P.A., as a representative in this matter. However, at the hearing herein petitioners appeared pro se. The hearing officer on several occasions informed petitioners of their right to be represented by counsel; once before the commencement of the hearing and once during the hearing.

14. Petitioners failed to offer any substantive evidence in support of the petition. However, the record contains no indication that an unincorporated business was being conducted by petitioner Ski Ng Lau. As indicated he was a stockholder in Lon Jing Restaurant, Inc. and the audit adjustments were connected with income derived from said corporation.

CONCLUSIONS OF LAW

A. That the Personal Income Tax imposed by Article 30 of the Tax Law is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issues presented herein, unless otherwise specified all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

B. That section 689 of the Tax Law provides in part as follows:

"Section 689. Petition to Tax Commission

* * *

(e) Burden of proof. In any case before the tax commission under this article, the burden of proof shall be upon the petitioner..."

C. That petitioners failed to sustain the burden of proof. Petitioners failed to provide any documentary or testimonial evidence to substantiate their claim that their cost of living expenses were considerably less than said expenses were estimated to be by the Audit Division in the notices of deficiency.

D. That, although the notices of deficiency asserted a liability for additional unincorporated business tax, the record contains no indication that an unincorporated business was being conducted. The record shows that Sik Ng Lau was a stockholder in Lon Jing Restaurant, Inc. and the audit adjustments were connected with income derived from said corporation. Accordingly, there is no basis for the assertion of unincorporated business tax and said tax and related penalties and interest is cancelled.


E. That the petition herein is granted to the extent indicated in Finding of Fact #11 and Conclusion of Law "D", supra and the notices of deficiency herein dated March 5, 1979 are sustained, as modified by the Audit Division in accordance with this decision.


DATED: Albany, New York

SEP 28 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER