

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Woo Kuey 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

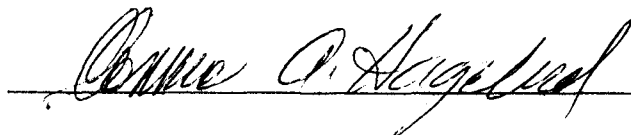
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Woo Kuey Lau, the petitioner in the within proceeding, by enclosing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

Woo Kuey 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

Woo Kuey Lau
98-21 65th Ave. #1D
Rego Park, NY 11374

Dear Mr. 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	:	
	:	
WOO KUEY LAU	:	DECISION
	:	
for Redetermination of a Deficiency 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.	:	

Petitioner, Woo Kuey Lau, 98-21 65th Avenue, Apt. 1-D, Rego Park, New York 11374, filed a petition for redetermination of a deficiency 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 (File No. 26489).

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 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq., (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner properly computed his 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. Petitioner Woo Kuey Lau, and his wife Shui Yin Lau, timely filed IT-208 New York State Combined Income Tax Returns for the years 1974, 1975 and 1976. On each of the returns petitioner reported that he was a restaurant

manager and on each of the returns his wife reported that she was a restaurant worker. Actually he and his son, one Sik Ng Lau, were the sole stockholders in the Lon Jing Restaurant, Inc. Petitioner's reported total New York income was \$7,836.00, \$10,006.16 and \$14,522.24 respectively for the years in issue.

2. Consents extending the period of limitation upon assessment to April 15, 1979 were validated December 28, 1977.

3. On March 5, 1979, the Audit Division issued a Notice of Deficiency against petitioner for the years in issue as follows:

Tax Deficiencies	\$18,006.86
Penalty and/or Interest	7,087.92
Balance Due	<u>\$25,094.78</u>

4. There were two statements of audit changes, both of which were dated January 19, 1979. They read as follows:

"As a result of an income tax audit, additional tax plus interest is due in accordance with the attached schedules:

<u>New York State</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>
Additional Personal Income Tax	\$3,376.35	\$4,862.60	\$4,319.34
Penalty 685(b)	168.82	243.13	215.96
Additional Unincorporated Business Tax	1,186.06	1,696.75	1,306.25
Penalty 685(b)	59.30	84.84	65.31
Penalty 685(a)(1)	266.85	381.76	293.90
Penalty 685(a)(2)	290.58	279.96	137.15
Penalty 685(c)	53.77	76.92	59.22

New York City

Additional Personal Income Tax	1,259.51
Penalty 685(b)	62.98"

5. After a re-audit of petitioner's books, records and various proofs, a \$990.00 capital gains modification which had been included in arriving at the above deficiencies, was cancelled. Likewise petitioner admitted that he failed to report \$766.00 of interest income in 1974 and \$33.53 of interest income in 1975.

6. Because of the lack of adequate books and records, the audit herein was conducted by the cash availability method of income reconstruction. The records examined were bank statements, cancelled checks, savings account passbooks, cash receipts and disbursements journals, general journals, trial balances, brokerage statements and federal income tax returns. Items on the returns were checked and were found to be substantially correct as reported. However, loans to Lon Jing Restaurant, Inc. of \$17,000.00 in 1974, \$27,500.00 in 1975 and \$20,500.00 in 1976 were disallowed as unsubstantiated and accordingly added back as income from other sources.

7. The statement of cash availability indicated additional income of \$14,492.00 in 1974, \$13,350.00 in 1975 and \$13,250.00 in 1976. To these amounts were added \$17,000.00 for 1974, \$27,500.00 for 1975 and \$20,500.00 for 1976 (the disallowed loans). Accordingly, total adjustments for other income were \$31,492.00 for 1974, \$40,850.00 for 1975 and \$33,250.00 for 1976.

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

9. Petitioner failed to offer any substantive evidence in support of his petition. However, the record contains no indication that an unincorporated business was being conducted by petitioner. As indicated petitioner 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 petitioner failed to sustain his burden of proof. Petitioner failed to provide any documentary or testimonial evidence to substantiate his claim that what the Audit Division found to be additional income of petitioner's business was in fact money loaned to the business by other sources.


D. That, although the Notice of Deficiency dated March 5, 1979 asserts a liability for additional unincorporated business tax, the record contains no indication that an unincorporated business was being conducted. The record shows that Woo Kuey 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.

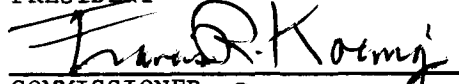
E. That the petition herein is granted to the extent indicated in Finding of Fact #5 and Conclusion of Law "D", supra and the Notice of Deficiency dated March 5, 1979 is sustained, as modified by the Audit Division in accordance with this decision.


DATED: Albany, New York

SEP 28 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER