

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 of :
 Wei Yung & Maria Loo :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1973 & 1974. :
_____ :

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 21st day of October, 1983, she served the within notice of Decsiion by certified mail upon Wei Yung & Maria Loo, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Wei Yung & Maria Loo
85 4th Ave. #6FF
New York, NY 10003

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
21st day of October, 1983.

Connie A. Hagelund

Patricia Kupscheni

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
Wei Yung & Maria Loo :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Tax under Article 22 of the Tax Law for the Years :
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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 21st day of October, 1983, she served the within notice of Decsiion by certified mail upon Edward Y. Ma the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

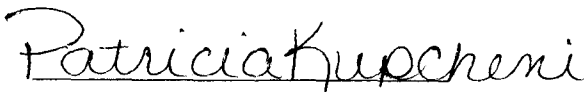
Edward Y. Ma
One State St. Plaza
New York, NY 10004

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 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
21st day of October, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

October 21, 1983

Wei Yung & Maria Loo
85 4th Ave. #6FF
New York, NY 10003

Dear Mr. & Mrs. Loo:

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 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: Petitioner's Representative
Edward Y. Ma
One State St. Plaza
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WEI YUNG LOO AND MARIA LOO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Years	:	
1973 and 1974.	:	

Petitioners, Wei Yung Loo and Maria Loo, 85 4th Avenue, #6FF, New York, New York 10003 filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1973 and 1974 (File No. 24103).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 7, 1983 at 1:15 P.M. with all briefs to be submitted by March 7, 1983. Petitioner Wei Yung Loo appeared with Edward Y. Ma, Esq., as counsel and interpreter. The Audit Division appeared by Paul B. Coburn, Esq., (Alexander Weiss, Esq., of counsel).

ISSUES

Whether an adjustment attributing additional unreported income to petitioners was proper.

FINDINGS OF FACT

1. Petitioners, Wei Yung Loo and Maria Loo, timely filed joint New York State income tax resident returns on Forms IT-200 for the years 1973 and 1974. On each return the sole item of income reported was the wages of Wei

Yung Loo (hereinafter petitioner). Such wages, of \$1,437.20 for 1973 and \$6,240.00 for 1974, were derived from Chunking Restaurant, Inc., 21 East 8th Street, New York City. The number of exemptions claimed on said returns was four in 1973 and five in 1974.

2. On March 15, 1978 the Audit Division issued a Statement of Audit Changes to petitioners wherein, pursuant to an explanatory Schedule of Audit Adjustments, petitioners' gross income was raised to \$21,485.00 for 1973 and \$36,676.00 for 1974. Said gross income figures were determined through use of an indirect method of income reconstruction. Such method, which can best be described as a modified source and application of funds method incorporating a cost of living analysis, was used since petitioner's books and records were inadequate. Accordingly, a Notice of Deficiency was issued against petitioners on April 12, 1978 asserting additional personal income tax of \$2,959.00 plus interest of \$941.60, for a total due of \$3,900.60.

3. Petitioner alleged that he had income during the years at issue from various sources, which had not been incorporated into the adjustment computation, as follows:

- (a) Funds borrowed from a friend - \$4,000.00 (1973).
- (b) Automobile insurance settlement - \$1,500.00 (1973).
- (c) Bank loan - \$5,000.00 (1973).
- (d) Unemployment insurance benefits - estimated at between \$1,000.00 and \$2,000.00 (1973).
- (e) Stock sale proceeds - estimated at between \$7,000.00 and \$10,000.00 (1973 and 1974).

4. Petitioner offered no documentation to support his contention that he had borrowed \$4,000.00 from a friend in 1973.

5. Petitioner offered no documentation to support his contention that he had received an automobile insurance settlement of \$1,500.00 in 1973.

6. Petitioner submitted documentation evidencing payments made to the National Bank of North America with respect to a loan. Four payments, each in the amount of \$168.00, were made in 1973 and twelve such payments were made in 1974. Although petitioner contended that the loan proceeds of \$5,000.00 were received in 1973 and that such funds were used for living expenses, no evidence was submitted to support such contention.

7. Petitioner offered no documentation to support his contention that he received unemployment insurance benefits during 1973.

8. During the audit, petitioners provided the auditor with sales slips evidencing four stock sale transactions. Each sale had a settlement date in 1973. The net proceeds from these sales totaled \$9,615.59. Although petitioners maintained accounts with four brokerage firms, no brokerage account statements were provided at either the audit or the hearing held herein. Accordingly, it is not known to what extent, if any, other transactions may have occurred during 1973 and 1974. Although petitioner testified that he used the proceeds toward a \$5,000.00 investment in a restaurant known as the Szechuan Palace, no documentation was submitted to evidence this. Petitioner testified that he made no security purchases during 1973 and 1974. No capital transactions were reported on petitioner's returns.

9. The reconstructed gross income held attributable to petitioners for 1973 and 1974 was computed in a "cost of living" schedule as follows:

	1973	1974
Food	\$ 2,800.00	\$ 3,535.00
Clothing	940.00	1,240.00
Personal Care	275.00	367.00
Rent (35.25 x 52 weeks - 1973, \$450 x 12 months - 1974)	1,830.00	5,400.00
Electricity	125.00	177.00
Gas	52.00	70.00
Restaurant meals and snacks	170.00	260.00

House Furnishings	255.00	390.00
Household Supplies	135.00	190.00
Laundry	160.00	170.00
Medical Expenses	770.00	988.00
Insurance	706.00	706.00
Telephone	240.00	240.00
Auto	1,152.00	1,315.00
Repayment of Loans	672.00	2,016.00
Loan to Business	9,600.00	12,800.00
Taxes	203.00	812.00
Investment - Szechuan Palace		5,000.00
Deposit of Savings	400.00	
Vacations and Sundry	1,000.00	1,000.00
Total	<u>\$21,485.00</u>	<u>\$36,676.00</u>

The amounts assigned in the above schedule for the normal living expense items were taken from statistics provided by the Community Council of Greater New York based on certain data including family size and family member ages.

10. Petitioner rendered testimony with respect to certain living expenses incorporated into said schedule. Pursuant to such testimony he estimated such living expenses to be as follows:

	1973	1974
Food	\$1,560.00	\$1,560.00
Clothing	150.00	150.00
Personal Care	100.00	100.00
Electricity (claims included in rent)	- 0 -	- 0 -
Gas (Claims include in rent)	- 0 -	0 -
Restaurant Meals and snacks	0 -	0
Household Furnishings	0	0
Laundry	30.00	30.00
Medical Expenses	0	0
Telephone	100.00	100.00
Auto	0	0
Vacations and Sundry	0	0

No documentary evidence was submitted to support the estimates given by petitioner for the above stated expenses.

11. During the entire year 1973, and through August 1974 petitioners resided at 50-25 Newtown Road, Woodside, New York, where they paid rent of

\$125.00 per month. In September 1974 petitioners moved to 85 4th Avenue, New York City. Four rental payments of \$450.00 each, plus a security deposit of the same amount were paid in the latter part of 1974 for this apartment. Petitioner testified that he paid \$100.00 for expenses relative to his move.

12. The items "loan to business" of \$9,600.00 for 1973 and \$12,800.00 for 1974 incorporated into the "cost of living" schedule were taken from journal entries of the Chunking Restaurant, Inc. (Chunking) showing loans of said amounts by a stockholder. Since petitioner was the sole individual listed as an officer and/or stockholder of Chunking on its 1974 New York State Corporation Franchise Tax Report, said loans were attributed to him.

13. Petitioner was president of Chunking during the years at issue.

14. Petitioner alleged that he made no loans to Chunking during the years at issue. He contended that one individual, Tang Yun Fa, was the major shareholder in Chunking and that four other individuals, other than he and Mr. Fa, were shareholders. He contended that he owned between five to ten percent of Chunking's stock.

15. Petitioner submitted documentation evidencing that Chunking's premises were leased by Mr. Fa and that the business was purchased in November, 1971 by Mr. Fa.

16. Although petitioner was granted sufficient time subsequent to the hearing to submit documentation supporting his contention that he made no loans to Chunking, he failed to do so.

CONCLUSIONS OF LAW

A. That petitioner has failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that he had

other sources of income during 1973 and 1974 which were used in payment of the expenses listed in the "cost of living" schedule. Accordingly, no credit for additional sources of income is allowed.

B. That petitioners' rent expenses for 1973 were \$1,500.00 and their rent expenses for 1974, inclusive of their security deposit were \$3,250.00. Accordingly, petitioners' cost of living and gross income should be reduced to reflect these corrected amounts.

C. That petitioners' cost of living and gross income is to be increased to reflect the \$100.00 moving expense incurred in 1974 which was not previously incorporated into the "cost of living" schedule.

D. That petitioner has failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that he was not the stockholder who had made loans to Chunking of \$9,600.00 in 1973 and \$12,800.00 in 1974.

E. That petitioner has failed to sustain his burden of proof, required pursuant to section 689(e) of the Tax Law, to show that the balance of disputed living expenses, as estimated by the Audit Division, were erroneous or improper.

F. That the petition of Wei Yung Loo and Maria Loo is granted to the extent provided in Conclusion of Law "B" supra and except as so granted, said petition is, in all other respects, denied.

G. That the Audit Division is hereby directed to modify the Notice of Deficiency dated April 12, 1978 to be consistent with the decision rendered herein.

DATED: Albany, New York

OCT 21 1983

STATE TAX COMMISSION

Rodriguez
PRESIDENT

Francis D. Karmy
COMMISSIONER

[Signature]
COMMISSIONER