



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Kon Y. Choi :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or for Refund :  
of Personal Income and Unincorporated Business :  
Taxes under Articles 22 and 23 of the Tax Law, New :  
York City Personal Income Tax under Chapter 46, :  
Title T of the Administrative Code of the City of :  
New York and New York City Nonresident Earnings :  
Tax under Chapter 46, Title U of the Administrative :  
Code of the City of New York, for the Years 1978 :  
and 1979. :

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State of New York :  
ss.:  
County of Albany :

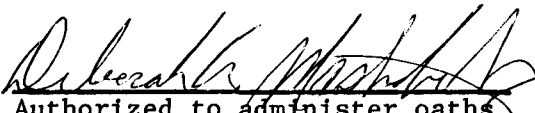
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon William J. Reilly, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William J. Reilly  
396 Broadway, Suite 1001  
New York, NY 10013

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  
13th day of December, 1985.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

December 13, 1985

Kon Y. Choi  
85 Ridge St.  
Eastchester, NY 10709

Dear Mr. Choi:

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 of the Tax Law and Chapters T and U of the Administrative Code of the City of New York, 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  
William J. Reilly  
396 Broadway, Suite 1001  
New York, NY 10013  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

KON Y. CHOI : DECISION

for Redetermination of a Deficiency or for :  
Refund of New York State Personal Income and :  
Unincorporated Business Taxes under Articles :  
22 and 23 of the Tax Law, New York City :  
Personal Income Tax under Chapter 46 Title T of :  
the Administrative Code of the City of New York :  
and New York City Nonresident Earnings Tax :  
under Chapter 46, Title U of the Administrative :  
Code of the City of New York, for the Years :  
1978 and 1979.

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Petitioner, Kon Y. Choi, 85 Ridge Street, Eastchester, New York 10709, filed a petition for redetermination of a deficiency or for refund of New York State personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law, New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the years 1978 and 1979 (File No. 35250).

A 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 April 22, 1985 at 1:15 P.M., with all briefs to be submitted by July 19, 1985. Petitioner appeared by William J. Reilly, Esq. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether adjustments attributing additional unreported income to petitioner for the years 1978 and 1979 were proper.

FINDINGS OF FACT

1. Kon Y. Choi and his wife, Suck I. Choi, timely filed a New York State Income Tax Resident Return (with City of New York Personal Income Tax & Nonresident Earnings Tax) for each of the years 1978 and 1979 under filing status "Married filing separately on one return". On each return Kon Y. Choi (hereinafter "petitioner") reported a net profit of \$12,816.00 (1978) and \$15,067.00 (1979) derived from his sole proprietorship, Jo Mar Wine & Liquor. For New York City purposes, Mr. & Mrs. Choi filed as residents for 1978. For 1979 they filed as part year residents of New York City. For each of said years petitioner filed a New York State unincorporated business tax return.

2. As the result of a field audit, the Audit Division issued a Statement of Personal Income Tax Audit Changes and a Statement of Unincorporated Business Tax Audit Changes to petitioner on November 26, 1980 whereon the following adjustments were made:

<u>Adjustment</u>	<u>1978</u>	<u>1979</u>
Additional gross receipts as a result of cash availability	\$ 22,038.00	\$ 12,306.00
Additional gross receipts as a result of reconciliation of deposits to receipts	11,436.00	12,642.00
Insurance	<u>2,883.00</u>	<u>2,472.00</u>
TOTAL ADJUSTMENT	\$ <u>36,357.00</u>	\$ <u>27,420.00</u>

Accordingly, a Notice of Deficiency was issued against petitioner on March 5, 1981 asserting additional New York State and City personal income taxes of \$10,481.24, additional unincorporated business tax of \$2,973.03, plus penalty and interest of \$2,756.49, for a total due of \$16,210.76. Said penalty was asserted on the basis that the deficiency was due to petitioner's negligence.

3. Petitioner conceded the aforestated adjustments to insurance of \$2,883.00 (1978) and \$2,472.00 (1979).

4. Petitioner alleged that he had additional sources of cash during the years at issue which were not considered in the cash availability analysis computed by the Audit Division. Such additional cash was purportedly in the nature of loans made to petitioner, proceeds from the sale of real property located in Korea and amounts belonging to petitioner's sister which were deposited into his bank account and were to be returned on her arrival in the United States.

5. Petitioner submitted copies of seven (7) statements, handwritten in Korean on plain paper, which purport to be loan documents and affidavits. The bottom portion of each statement contains a typewritten passage which petitioner alleged represents the English translation of the corresponding Korean statement. The purported English translations are as follows:

(a) "I, Kon Y. Choi, agree to repay various loans of \$8,370 from Dr. Kim at his demand without interest."

(b) "I, Kon Y. Choi, hereby state that I have been depositing \$9,700 in my bank account which are remitted by my sister in Korea. Upon arrival of my sister, the money will be repaid to her at demand."

(c) "I, Chi Y. Kim, make a loan of \$5,000 from Mr. Kon Y. Choi and will be paid at demand without interest."

(d) "I, Chan W. Chun, hereby agree to repay \$4,000 of loan from Mr. Kon Y. Choi at his demand without interest."

(e) "I, Chi Y. Kim, hereby agree to repay a loan of \$1,000 from Mr. Kon Y. Choi at his demand without interest."

(f) "I, Kon Y. Choi, hereby state that I have been depositing \$8,640 in my bank account which are remitted by my sister in Korea in 1978 and that they will be paid to my sister upon (sic) her arrival in the U.S."

(g) "I, Chi Y. Kim, hereby agree to repay \$3,100 of loan from Mr. Kon Y. Choi at his demand without interest."

6. None of the aforestated loan statements and affidavits were notarized or authenticated in any way. Although most of the statements in Korean bore the year (some of which were 1977) the purported English translation bore no such year.

7. Petitioner alleged that in early 1977 he sold real property in Korea, which was owned jointly by him and his sister, to one Mr. Kim. Such property was sold for twelve million won, which he claimed had an exchange rate of approximately 27,000 U.S. dollars. With respect to the receipt of the proceeds on such sale, petitioner testified that the \$27,000.00 was paid over three installments. The first installment was in early 1977; the second installment was in late 1977 and the final installment was in early 1978. With respect to the year during which the sale proceeds were brought into the United States, petitioner testified that:

"1977 \$4,000, \$5,000 I told you. 1977, late part of the '77 coming in, maybe \$11,000 more...late part of the '77 approximately \$12,000 almost. \$12,000. '78, early part of '78, \$8,000. '79, maybe late '78, comes in almost \$9,000 something."

8. Petitioner submitted a certified translation of the sales contract for the aforestated real property transaction together with a certified translation of the property registration documents. In contrast to petitioner's testimony, such documents show that said sale was consummated on November 29, 1978. Title was transferred on October 12, 1979, after all payments have been made. Furthermore, the purchaser of said property was one Han-Ki Han, not, as petitioner had testified, "Mr. Kim".

9. Petitioner did not report income from the sale of real property on either his 1978 or 1979 tax returns.

10. Petitioner testified that his sister in Korea sent him \$5,000.00 or \$6,000 in 1979 to be held until her arrival in the United States. He claimed

that the money was brought to the United States at various times in relatively small amounts of approximately \$1,000.00 to \$3,000.00.

11. Petitioner did not keep a record of the money he purportedly received from Korea.

12. Petitioner failed to show that the money he purportedly received from Korea or from loans tied into specific deposits into his bank accounts.

13. Petitioner did not address himself to the adjustments made for "additional gross receipts as a result of reconciliation of deposits to receipts".

CONCLUSIONS OF LAW

A. That pursuant to section 689(e) of the Tax Law (which is incorporated into Article 23 by section 722(a)), and sections T46-189.0(e) and U46-39.0(e) of the Administrative Code of the City of New York, the burden of proof is upon the petitioner except in three instances, none of which are present herein.

B. That petitioner has failed to sustain his burden of proof to show that the adjustments incorporated into the deficiency at issue herein were improper or erroneous.

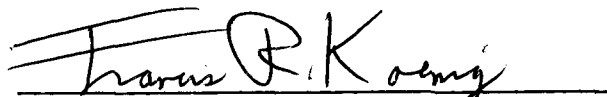
C. That the petition of Kon Y. Choi is denied and the Notice of Deficiency issued March 5, 1981 is sustained together with such additional penalty and interest as may be lawfully owing.

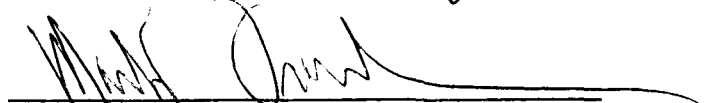
DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER