

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Winston Chung :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of NYS Income Tax :  
under Article 22 of the Tax Law for the Years :  
1978 & 1979. :

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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Winston Chung, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Winston Chung  
117 Hester St.  
New York, NY 10002

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
23rd day of May, 1985.

David Parchuck

James R. Shagnum  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
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under Article 22 of the Tax Law for the Years :  
1978 & 1979.

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Allen Wu, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allen Wu  
217 Broadway, 5th Fl.  
New York, NY 10007

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  
23rd day of May, 1985.

David Parchuck

Annunzio P. DiStefano  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

May 23, 1985

Winston Chung  
117 Hester St.  
New York, NY 10002

Dear Mr. Chung:

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, 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  
Allen Wu  
217 Broadway, 5th Fl.  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WINSTON CHUNG	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1978 and 1979.	:	

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Petitioner, Winston Chung, 117 Hester Street, New York, New York 10002, 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 1978 and 1979 (File No. 42822).

A hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 4, 1985 at 1:30 P.M. Petitioner appeared by Allen Wu, Esq. The Audit Division appeared by John P. Dugan, Esq. (Michael Gitter, Esq., of counsel).

#### ISSUE

Whether the Audit Division properly determined petitioner's additional income based on an audit of his grocery stores.

#### FINDINGS OF FACT

1. Petitioner, Winston Chung, filed New York State income tax resident returns with City of New York personal income tax for the years 1978 and 1979.
2. On December 9, 1982, as the result of a field audit, the Audit Division issued two notices of deficiency against petitioner. The first was in the amount of \$3,807.87 plus penalty of \$190.39 and interest of \$1,435.07 for a total due of \$5,433.33 for the year 1978. The second notice was in the amount

of \$7,124.14 plus penalty of \$356.21 and interest of \$2,079.32 for a total due of \$9,559.67 for the year 1979.

3. Petitioner, during the years in issue, owned and operated two grocery stores, The Eurasia Grocery Store ("Eurasia") and the E & A Grocery Store ("E & A"). The stores have subsequently gone out of business due to numerous burglaries and thefts, increases in rent and general financial hardship as a result of their being located in an economically depressed area.

4. On audit, the auditor found that petitioner kept very limited books and records. He asked petitioner for all the expense receipts, purchase invoices and bills petitioner kept, however, petitioner told him that, because of numerous burglaries, most of the records of the stores had been destroyed. At the time of the audit, the only records made available to the auditor were some bank statements and cancelled checks.

5. For 1978, the sales tax returns of Eurasia reported gross sales of \$50,375.00. On Schedule C of petitioner's Federal income tax return, however, he reported gross sales of \$39,290.00 for the same year. The auditor, therefore, took the difference of \$11,085.00 and added it to petitioner's 1978 income as unreported gross sales. Of the purchases and expense deductions claimed by petitioner for E & A in 1978, the auditor disallowed \$21,128.05 due to lack of adequate substantiation.

6. With respect to taxable year 1979, the auditor disallowed \$30,560.75 in claimed purchases and expense deductions of Eurasia and \$15,948.67 in claimed purchases and expense deductions of E & A. In both cases the disallowance was based on a lack of substantiation.

7. Subsequent to the audit, petitioner produced a large number of purchase invoices. The auditor, however, would not allow the invoices because the

invoices either were undated, had no delivery address or had the dates altered so that it was impossible to determine whether the invoices were for the years in issue or whether the deliveries were to petitioner's stores.

8. Prior to the hearing, petitioner obtained letters from several of his suppliers which letters were introduced in evidence. The letters indicated cash purchases for Eurasia during 1979 as follows:

<u>Supplier</u>	<u>Purchases</u>
Kossar's Bakery, Inc.	\$ 241.80
Tip Top Farms, Inc.	4,344.60
G. La Rosa & Son	2,018.06
ITT Continental Baking Company, Inc.	<u>3,242.13</u>
TOTAL	\$9,846.59

Petitioner produced no similar evidence of purchases for Eurasia for 1978 or for E & A for either year in issue.

9. The auditor had disallowed \$1,841.63 of \$2,590.13 in utility expense deductions claimed for E & A in 1978. At the hearing, petitioner submitted evidence of cancelled checks drawn to Consolidated Edison totalling \$1,732.17 for E & A during 1978. Petitioner also submitted evidence of checks drawn to New York Telephone Co. The auditor, however, explained that no telephone expenses had been disallowed for either store for either year in issue.

#### CONCLUSIONS OF LAW

A. That 20 NYCRR 152.1(a) promulgated pursuant to section 658(a) of the Tax Law provides that every person subject to tax shall keep records sufficient to establish the amount of gross income, deductions, credits and other matters required in any New York State income tax returns. Since petitioner's limited records were inadequate to substantiate all of the purchases and expense

deductions claimed for the years in issue petitioner has the burden of proving that the audit performed was erroneous (Tax Law §689[e]).

B. That petitioner has adequately demonstrated that he had additional purchases for Eurasia of \$9,846.59 in 1979 which had previously been disallowed by the auditor. Therefore, the disallowed deductions for Eurasia in 1979 are reduced to \$20,714.16. Additionally petitioner has proven that he had \$1,732.17 in utility expenses for E & A during 1978. Therefore the disallowed utility expenses for E & A for 1978 are reduced to \$857.96 and the total disallowed purchases and expenses for that year are reduced from \$21,128.05 to \$20,144.38.

C. That petitioner has not met his burden of proof with respect to the other purchases and expenses disallowed by the Audit Division. The invoices supplied were either undated, not addressed or altered thus rendering them inadequate to substantiate expenses for the years in issue. The remaining disallowances by the auditor were, therefore, proper.

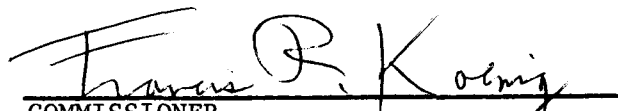
D. That the petition of Winston Chung is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is directed to modify the notices of deficiency issued December 9, 1982 accordingly; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER