

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Bing Sun Chan Restaurants, Ltd. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 8/1/65 - 12/12/75. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1979, he served the within notice of Determination by mail upon Bing Sun Chan Restaurants, Ltd., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bing Sun Chan Restaurants, Ltd.
c/o Carlos Negron
Yonkers, NY

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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Bing Sun Chan Restaurants, Ltd. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 8/1/65 - 12/12/75. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1979, he served the within notice of Determination by mail upon Emanuel Kessler the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Emanuel Kessler
Kessler & Kessler
60 E. 42nd St.
New York, NY 10017

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
26th day of November, 1979.

Joanne Krapp

J. Vredenburg

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

November 26, 1979

Bing Sun Chan Restaurants, Ltd.
c/o Carlos Negron
47 Riverdale Ave.
Yonkers, NY

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 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 Laws 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Emanuel Kessler
Kessler & Kessler
60 E. 42nd St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
BING SUN CHAN RESTAURANTS LTD. : DETERMINATION
for Revision of a Determination or for Refund of :
Sales and Use Taxes under Articles 28 and 29 of :
the Tax Law for the Period August 1, 1965 through :
December 12, 1975.

Applicant, Bing Sun Chan Restaurants Ltd., c/o Carlos Negron, 47 Riverdale Avenue, Yonkers, New York, filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through December 12, 1975 (File No. 19594).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 22, 1979 at 1:15 P.M. and was continued on May 23, 1979 at 9:15 A.M. Applicant appeared by Emanuel Kessler, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau accurately determined applicant's sales tax liability for the period August 1, 1965 through December 12, 1975.

FINDINGS OF FACT

1. On February 1, 1976, the Sales Tax Bureau received a Notification of Sale, Transfer of Assignment in Bulk from applicant, Bing Sun Chan Restaurants, Ltd., regarding the sale of its business to Dragon Inn Chinese Restaurant Co. Said notification indicated December 12, 1975 as the scheduled sale date and \$25,000.00 as the sale price.

2. On June 24, 1976, as the result of applicant's failure to submit information requested, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant for the period August 1, 1965 through December 12, 1975 in the amount of \$17,700.00 plus penalty and interest of \$11,354.00 for a total of \$29,054.00. The Sales Tax Bureau determined the tax due in accordance with the provisions of section 1138(a) of the Tax Law.

3. On October 8, 1976, the Sales Tax Bureau conducted an audit of applicant's available records which consisted of guest checks for the period May 11, 1975 through October, 1975. Applicant contended that all other records were stolen from the office located at 856 E. 165th Street, Bronx, New York.

The Sales Tax Bureau summarized the guest checks for the days from May 11, 1975 through October 19, 1975 and found the total taxable receipts to be \$12,765.96. The Bureau did not give consideration to the guest checks because they were not entirely in numerical sequence and could not be reconciled with any other books and records. As a result, there was no adjustment made to the notice issued June 24, 1976.

4. Applicant operated a Chinese restaurant located at 791 Morris Park Avenue, Bronx, New York. Applicant did not serve alcoholic beverages. The business comprised an area of approximately 940 square feet.

5. Applicant's business operation began May 11, 1975 and was discontinued October 19, 1975. During said period, applicant did not register as a sales tax vendor nor file New York State and local sales and use tax returns.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau's determination of sales taxes due from applicant for the period August 1, 1965 through December 12, 1975 was, in part, erroneous, since it included sales taxes due for periods during which the applicant was not conducting business. The amount of tax due as shown on said Notice is reduced to \$1,040.00, as follows:

<u>Period Ended</u>	<u>Tax Due on Notice</u>	<u>Adjustment</u>
8/1/65 to 3/31/69	\$ 4,400.00	Cancelled
4/1/69 to 5/31/71	2,600.00	Cancelled
6/1/71 to 6/30/74	7,400.00	Cancelled
7/1/74 to 6/30/75	2,200.00	\$ 311.00
7/1/75 to 8/31/75	400.00	400.00
9/1/75 to 12/12/75	700.00	329.00
	<u>\$ 17,700.00</u>	<u>\$1,040.00</u>

B. That the application of Bing Sun Chan Restaurants, Ltd. is granted to the extent indicated in Conclusion of Law "A". The Sales Tax Bureau is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 24, 1976, and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER