

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lee Tong :
d/b/a Hong Kong Tailors : 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 3/1/75 - 2/28/78. :

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 6th day of August, 1980, he served the within notice of Decision by mail upon Lee Tong, d/b/a Hong Kong Tailors, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lee Tong
d/b/a Hong Kong Tailors
45-08 40 St.
Apt. E-31
Long Island, 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
6th day of August, 1980.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lee Tong :
d/b/a Hong Kong Tailors : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
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for the Period 3/1/75 - 2/28/78. :

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 6th day of August, 1980, he served the within notice of Decision by mail upon Evelyn Lorge the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Evelyn Lorge
50 Court St.
Brooklyn, NY 11201

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
6th day of August, 1980.

Intorah C. Bank

J. Vredenburg

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

August 6, 1980

Lee Tong
d/b/a Hong Kong Tailors
45-08 40 St.
Apt. E-31
Long Island, NY

Dear Mr. Tong:

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) 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
Evelyn Lorge
50 Court St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LEE TONG	:	DECISION
D/B/A HONG KONG TAILORS	:	
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 March 1, 1975 through February 28,	:	
1978.	:	

Petitioner, Lee Tong d/b/a Hong Kong Tailors, 45-08 40th Street, Apt. E-31, Long Island, New York, filed a petition 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 March 1, 1975 through February 28, 1978 (File No. 22570).

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 17, 1980 at 1:15 P.M. Petitioner appeared by Evelyn Lorge, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the Audit Division's determination of additional sales taxes due, based on an audit of petitioner's available records, was correct.

FINDINGS OF FACT

1. Petitioner, Lee Tong d/b/a Hong Kong Tailors, operated a custom tailor shop.

2. On June 19, 1978, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period March 1, 1975 through February 28, 1978

for taxes due of \$1,502.64, plus penalty and interest of \$626.47, for a total of \$2,129.11.

3. On audit, the records available to the Audit Division for examination were a sales order book, sales tax returns and Federal income tax returns. Petitioner did not maintain any other books and records. The sales tax auditor prepared a listing of all orders taken during the period under audit from the sales order book. The order book indicated seventy-three cancelled sales which the auditor allowed and were excluded from his computation of taxable sales. The auditor disallowed any sale considered non-taxable by petitioner as being an out-of-state sale since petitioner was unable to substantiate that the merchandise was actually delivered to the customer outside of New York State. Total taxable sales for the audit period amounted to \$37,488.00 whereas petitioner reported taxable sales of \$18,704.00, leaving additional taxable sales of \$18,784.00 and tax due thereon of \$1,502.64.

4. Petitioners records were insufficient for the Audit Division to determine the exact amount of the petitioner's sales tax liability.

5. Petitioner submitted a listing of fifty-three transactions which purported to be additional cancelled sales not considered by the Audit Division. Petitioner contended that the merchandise is still in his possession since the cancellation occurred after the garments were completed or the garments were returned and monies refunded to the customer. Petitioner argued that such cancellations were inadvertantly not shown as such in his sales order book.

6. Petitioner also contended that consideration should be given to out-of-state sales although documentation is not available.

7. Petitioner offered no substantial evidence to show that the Audit Division's determination was incorrect.

CONCLUSIONS OF LAW

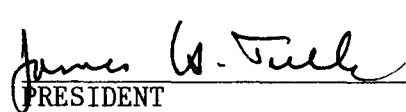
A. That the Audit Division, in the absence of adequate books and records, properly determined petitioner's sales from such information as was available in accordance with the provisions of section 1138(a) of the Tax Law and that the additional taxable sales resulting therefrom are correct.

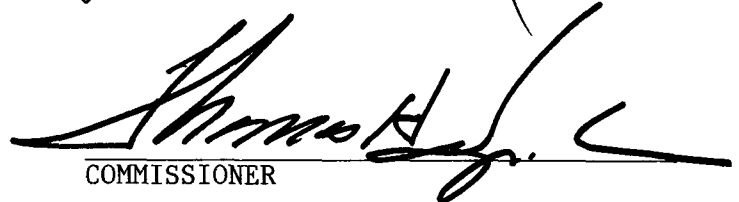
B. That the petition of Lee Tong d/b/a Hong Kong Tailors is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 19, 1978 is sustained.

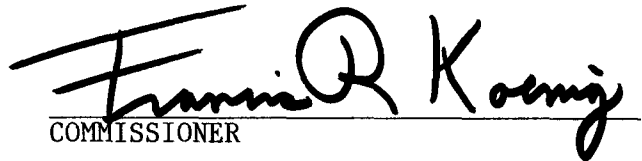
DATED: Albany, New York

STATE TAX COMMISSION

AUG 06 1990


PRESIDENT


COMMISSIONER


COMMISSIONER