

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Winston Chung
d/b/a Eurasia Grocery Store

: 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 3/1/74-11/30/78.

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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Winston Chung, d/b/a Eurasia Grocery Store the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Winston Chung
d/b/a Eurasia Grocery Store
117 Hester St.
New York, NY 10002

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
27th day of May, 1982.

Carrie A. Haglund

J. Vredenburg

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

May 27, 1982

Winston Chung
d/b/a Eurasia Grocery Store
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) 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WINSTON CHUNG	:	DECISION
D/B/A EURASIA GROCERY STORE	:	
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 May 1, 1974	:	
through November 30, 1978.	:	

Petitioner, Winston Chung, d/b/a Eurasia Grocery Store, 117 Hester Street, New York, New York 10002, 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 May 1, 1974 through November 30, 1978 (File No. 29854).

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 July 30, 1981 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales taxes due from petitioner based on an examination of available records.

FINDINGS OF FACT

1. Petitioner, Winston Chung, d/b/a Eurasia Grocery Store, operated a grocery store located at 117 Hester Street, New York, New York. Petitioner began business operations on or about May 1, 1974. Petitioner did not register with the Department of Taxation and Finance as a sales tax vendor until October 25, 1977.

2. On December 20, 1979, as the result of an audit, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against petitioner covering the periods May 1, 1974 through August 31, 1977 and September 1, 1977 through November 30, 1978 for taxes due of \$10,722.64 and \$3,567.60, respectively, plus applicable penalty and interest due thereon.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period March 1, 1976 through February 28, 1979, to December 20, 1979.

4. Petitioner failed to provide the Audit Division with books and records for audit. Petitioner alleged that his books and records were stolen when the store was burglarized on different occasions during the audit period. The Audit Division obtained the names of petitioner's suppliers from purchase invoices available at the time the audit was to be conducted. Inquiries were sent to the suppliers requesting the amount of purchases made by petitioner for the period December 1, 1977 through November 30, 1978. From the responses received, the Audit Division determined taxable purchases of \$32,900.00 for said period which included soda, beer, cigarettes, candy, pet food, paper products and cleaning detergents. Markups were computed for each category of purchases based on current costs and selling prices and, when applied to the applicable purchases, resulted in taxable sales of \$184,708.00 for the audit period. Petitioner reported taxable sales of \$6,080.00, leaving additional taxable sales of \$178,628.00, and tax due thereon of \$14,290.24.

5. Petitioner argued that prior to the time he registered with the Department of Taxation and Finance, he sold exclusively nontaxable food products such as fruit, milk, butter and eggs. However, correspondence between the Audit Division and suppliers indicate that petitioner purchased taxable items

as early as July 1, 1974. Petitioner offered no evidence to show that there was any significant change in his business throughout the period under audit.

6. Petitioner did not file sales tax returns prior to June 1, 1977. Petitioner estimated gross and taxable sales reported on returns filed thereafter. Taxable sales reported on returns filed for the period June 1, 1977 through August 31, 1978 were actually purchases withdrawn from stock for petitioner's own use.

7. Petitioner failed to establish that reasonable cause existed for the abatement of penalty and interest above the statutory rate.

CONCLUSIONS OF LAW

A. That in the absence of books and records, the audit procedures adopted by the Audit Division to determine petitioner's taxable sales were proper as authorized in section 1138(a) of the Tax Law. That said determination resulting in additional sales taxes due is supported by substantial evidence and that petitioner has failed to sustain the burden of showing error.

B. That the petition of Winston Chung, d/b/a Eurasia Grocery Store is denied and the notices of determination and demand for payment of sales and use taxes due issued December 20, 1979 are sustained.

DATED: Albany, New York

MAY 27 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER