

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

December 3, 1982

Won Ton Garden, Inc.
56 Mott St.
New York, NY 10013

Gentlemen:

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 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
Frank Lam
168 Canal St., Rm. 202
New York, NY 10013
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WON TON GARDEN, INC. : DECISION
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, 1977 :
through February 29, 1980.

Petitioner, Won Ton Garden, Inc., 56 Mott Street, New York, New York 10013, 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, 1977 through February 29, 1980 (File No. 31159).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1982 at 2:45 P.M. Petitioner appeared by Frank Lam, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner, the purchaser in a bulk sales transaction, is liable for sales taxes determined to be due from the seller in accordance with section 1141(c) of the Tax Law.

FINDINGS OF FACT

1. On March 18, 1980, the Audit Division received a Notification of Sale, Transfer or Assignment in Bulk from petitioner, Won Ton Garden, Inc., regarding its purchase of Wah Sun Coffee Shop, Inc. Said notification indicated March 24, 1980 as the scheduled date of sale and listed the total sales price of the

business as \$50,000.00. The sales price of the furniture and fixtures was \$5,000 and tax of \$400.00 was paid thereon. The entire proceeds from the sale were held in escrow by the attorney for the seller.

2. On March 21, 1980, the Audit Division notified petitioner and the escrow agent of a possible claim for New York State and local sales and use taxes from the seller. The notification stated that no distribution of funds or property to the extent of the amount of the State's claim may be made before the following conditions have been met:

1. The State Tax Commission has determined the seller's liability, if any.
2. Payment of such liability has been made to the State.
3. This office has authorized you to release the funds or property.

3. On May 20, 1980, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for taxes due of \$19,356.21, plus interest of \$2,333.41, for a total of \$21,689.62. The taxes due were determined based on a field audit of the seller's available books and records for the period March 1, 1977 through February 29, 1980. Petitioner was held liable for the taxes determined due from the seller pursuant to section 1141(c) of the Tax Law.

4. The sale of the business actually took place on March 3, 1980. On March 24, 26 and 31, 1980, the escrow agent dispersed \$44,076.06 of the escrow account. Said amount included \$22,626.40 in unpaid sales taxes on returns not filed. The taxes determined above are in addition to this amount.

The balance of the escrow account was subsequently paid to general creditors.

CONCLUSIONS OF LAW

A. That section 1141(c) of the Tax Law provides, in pertinent part, that "(W)enever the tax commission shall inform the purchaser... that a possible

claim for...taxes exists, any sums of money... which the purchaser... is required to transfer over to the seller... shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined due from the seller... and the purchaser... is forbidden to transfer to the seller... any such sums of money... to the extent of the amount of the state's claim."

B. That the Tax Commission notified petitioner of the amount of taxes due from the seller within the time limitations set forth in section 1141(c) of the Tax Law; that the escrow fund was dispersed prior to said time period which was in violation of the provisions of section 1141(c) of the Tax Law. Accordingly, for failure to comply with such provision, petitioner is liable for the taxes determined due from Wah Sun Coffee Shop, Inc.

C. That the petition of Won Ton Garden, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 20, 1980 is sustained.

DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION

Arthur Robert A. Barland
PRESIDENT
Francis R. Kang
COMMISSIONER
[Signature]
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Won Ton Garden, Inc.

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 3/1/77-2/29/80.

State of New York
County of Albany

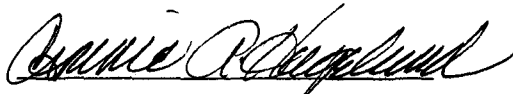
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Won Ton Garden, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Won Ton Garden, Inc.
56 Mott St.
New York, NY 10013

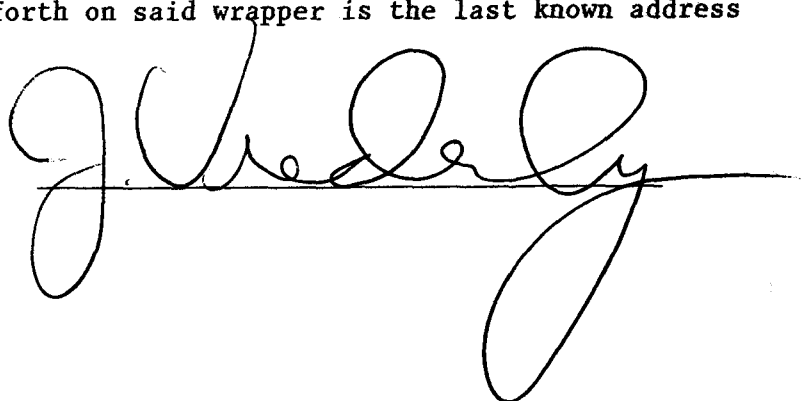
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
3rd day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Won Ton Garden, Inc. :

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 3/1/77-2/29/80. :

State of New York
County of Albany

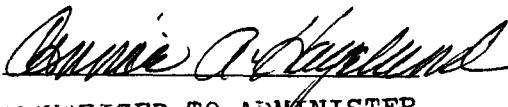
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Frank Lam the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

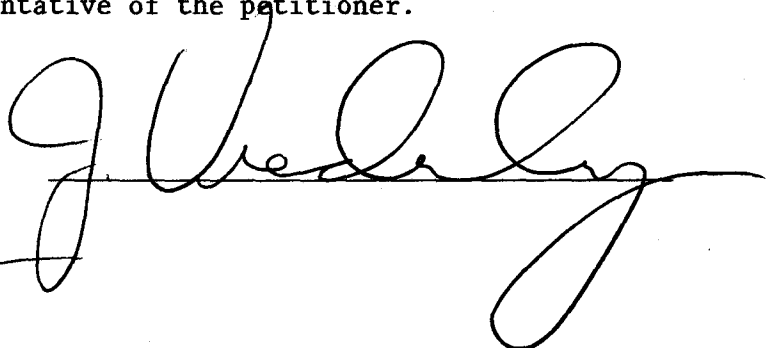
Frank Lam
168 Canal St., Rm. 202
New York, NY 10013

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
3rd day of December, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



P 230 844 248
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

PS Form 3800, Apr. 1976

SENT TO		<i>Frank Sam</i>	
STREET AND NO.		<i>168 Canal St Rm 202</i>	
P.O. STATE AND ZIP CODE		<i>New York, NY 10013</i>	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	c
		SPECIAL DELIVERY	c
		RESTRICTED DELIVERY	c
		SHOW TO WHOM AND DATE DELIVERED	c
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	c
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	c
	RETURN RECEIPT SERVICE	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	c
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

P 230 844 247
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

PS Form 3800, Apr. 1976

SENT TO		<i>Wm Tom Garden Inc</i>	
STREET AND NO.		<i>56 Matt St</i>	
P.O. STATE AND ZIP CODE		<i>New York, NY 10013</i>	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	c
		SPECIAL DELIVERY	c
		RESTRICTED DELIVERY	c
		SHOW TO WHOM AND DATE DELIVERED	c
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	c
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	c
	RETURN RECEIPT SERVICE	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	c
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			