

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHARLES AND JOSEPH COSTA :
D/B/A INTERNATIONAL HOUSE OF PANCAKES #4639 :
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 June 1, 1976 through :
May 31, 1978. :

In the Matter of the Petition :
of :
INTERNATIONAL HOUSE OF PANCAKES :
for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
JOSEPH COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

In the Matter of the Petition :
of :
CHARLES AND ARLENE COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

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 28th day of June, 1985, he served the within notice of decision by certified mail upon Joseph Costa, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Costa
508 Tether Lane
Paramus, NJ 07652

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
28th day of June, 1985.

David Parchuck

James A. DeGuzman
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHARLES AND JOSEPH COSTA :
D/B/A INTERNATIONAL HOUSE OF PANCAKES #4639 :
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 June 1, 1976 through :
May 31, 1978. :

In the Matter of the Petition :
of :
INTERNATIONAL HOUSE OF PANCAKES :
for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
JOSEPH COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

In the Matter of the Petition :
of :
CHARLES AND ARLENE COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

AFFIDAVIT OF MAILING

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 28th day of June, 1985, he served the within notice of decision by certified mail upon Gerald M. Cotter, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald M. Cotter
560 Northern Blvd., Suite 201-B
Great Neck, NY 22032

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
28th day of June, 1985.

David Parchuck

Constance A. O'Connell
Authorized to administer oaths
pursuant to Tax Law section 174

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

June 28, 1985

Joseph Costa
508 Tether Lane
Paramus, NJ 07652

Dear Mr. Costa:

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 & 722 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
Gerald M. Cotter
560 Northern Blvd. Suite 201-B
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHARLES AND JOSEPH COSTA :
D/B/A INTERNATIONAL HOUSE OF PANCAKES #4639 :
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 June 1, 1976 through :
May 31, 1978. :

In the Matter of the Petition :
of :
INTERNATIONAL HOUSE OF PANCAKES :
for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
JOSEPH COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

In the Matter of the Petition :
of :
CHARLES AND ARLENE COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

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 28th day of June, 1985, he served the within notice of decision by certified mail upon Charles & Joseph Costa, d/b/a International House of Pancakes #4639 the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles & Joseph Costa
d/b/a International House of Pancakes #4639
155-17 Northern Blvd.
Flushing, NY 11354

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
28th day of June, 1985.

David Parchuck

Annmarie A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHARLES AND JOSEPH COSTA :
D/B/A INTERNATIONAL HOUSE OF PANCAKES #4639 :
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 June 1, 1976 through :
May 31, 1978. :

In the Matter of the Petition :
of :
INTERNATIONAL HOUSE OF PANCAKES :
for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
JOSEPH COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

In the Matter of the Petition :
of :
CHARLES AND ARLENE COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

PAGE 2

AFFIDAVIT OF MAILING

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 28th day of June, 1985, he served the within notice of decision by certified mail upon Gerald M. Cutter, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald M. Cutter
560 Northern Blvd., Suite 201-B
Great Neck, NY 11021

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
28th day of June, 1985.

David Parchuck

Annunzio A. H. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

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

June 28, 1985

Charles & Joseph Costa
d/b/a International House of Pancakes #4639
155-17 Northern Blvd.
Flushing, NY 11354

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, 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
Gerald M. Cutter
560 Northern Blvd., Suite 201-B
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHARLES AND JOSEPH COSTA :
D/B/A INTERNATIONAL HOUSE OF PANCAKES #4639 :
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 June 1, 1976 through :
May 31, 1978. :

In the Matter of the Petition :
of :
INTERNATIONAL HOUSE OF PANCAKES :
for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
JOSEPH COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

In the Matter of the Petition :
of :
CHARLES AND ARLENE COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

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 28th day of June, 1985, he served the within notice of decision by certified mail upon International House of Pancakes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

International House of Pancakes
155-17 Northern Blvd.
Flushing, NY 11354

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
28th day of June, 1985.

David Parchuck

Bernie A. Heyland
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHARLES AND JOSEPH COSTA :
D/B/A INTERNATIONAL HOUSE OF PANCAKES #4639 :
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 June 1, 1976 through :
May 31, 1978. :

In the Matter of the Petition :
of :
INTERNATIONAL HOUSE OF PANCAKES :
for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
JOSEPH COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

In the Matter of the Petition :
of :
CHARLES AND ARLENE COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

AFFIDAVIT OF MAILING

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 28th day of June, 1985, he served the within notice of decision by certified mail upon Gerald M. Cotter, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald M. Cotter
560 Northern Blvd., Suite 201-B
Great Neck, NY 22032

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
28th day of June, 1985.

David Parchuck

Annunzio A. DiStefano

Authorized to administer oaths
pursuant to Tax Law section 174

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

June 28, 1985

International House of Pancakes
155-17 Northern Blvd.
Flushing, NY 11354

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) 690 & 722 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 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
Gerald M. Cotter
560 Northern Blvd., Suite 201-B
Great Neck, NY 22032
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHARLES AND JOSEPH COSTA :
D/B/A INTERNATIONAL HOUSE OF PANCAKES #4639 :
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 June 1, 1976 through :
May 31, 1978. :

In the Matter of the Petition :
of :
INTERNATIONAL HOUSE OF PANCAKES :
for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
JOSEPH COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

In the Matter of the Petition :
of :
CHARLES AND ARLENE COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

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 28th day of June, 1985, he served the within notice of decision by certified mail upon Charles & Arlene Costa, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles & Arlene Costa
8 Glen Court
Hawthorne, NJ 07506

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
28th day of June, 1985.

David Parchuck

James Anthony Muel

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHARLES AND JOSEPH COSTA :
D/B/A INTERNATIONAL HOUSE OF PANCAKES #4639 :
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 June 1, 1976 through :
May 31, 1978. :

In the Matter of the Petition :
of :
INTERNATIONAL HOUSE OF PANCAKES :
for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 :
of the Tax Law for the Year 1976. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
JOSEPH COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

In the Matter of the Petition :
of :
CHARLES AND ARLENE COSTA :
for Redetermination of a Deficiency or for Refund :
of New York State Personal Income Tax under :
Article 22 of the Tax Law and New York City :
Nonresident Earnings Tax under Chapter 46, Title :
U of the Administrative Code of the City of New :
York for the Year 1976. :

AFFIDAVIT OF MAILING

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 28th day of June, 1985, he served the within notice of decision by certified mail upon Gerald M. Cotter, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald M. Cotter
560 Northern Blvd., Suite 201-B
Great Neck, NY 11021

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
28th day of June, 1985.

David Parchuck

William W. Vukobratovich

Authorized to administer oaths
pursuant to Tax Law section 174

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

June 28, 1985

Charles & Arlene Costa
8 Glen Court
Hawthorne, NJ 07506

Dear Mr. & Mrs. Costa:

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 & 722 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
Gerald M. Cotter
560 Northern Blvd., Suite 201-B
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
 :
 of :
 :
 CHARLES AND JOSEPH COSTA :
 D/B/A INTERNATIONAL HOUSE OF PANCAKES #4639 :
 :
 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 June 1, 1976 :
 through May 31, 1978. :
 :

In the Matter of the Petition :
 :
 of :
 :
 INTERNATIONAL HOUSE OF PANCAKES :
 :
 for Redetermination of a Deficiency or for :
 Refund of Unincorporated Business Tax under :
 Article 23 of the Tax Law for the Year 1976. :
 :

DECISION

In the Matter of the Petition :
 :
 of :
 :
 JOSEPH COSTA :
 :
 for Redetermination of a Deficiency or for :
 Refund of New York State Personal Income Tax :
 under Article 22 of the Tax Law and New York :
 City Nonresident Earnings Tax under Chapter 46, :
 Title U of the Administrative Code of the City :
 of New York for the Year 1976. :
 :

In the Matter of the Petition :
 :
 of :
 :
 CHARLES AND ARLENE COSTA :
 :
 for Redetermination of a Deficiency or for :
 Refund of New York State Personal Income Tax :
 under Article 22 of the Tax Law and New York :
 City Nonresident Earnings Tax under Chapter 46, :
 Title U of the Administrative Code of the City :
 of New York for the Year 1976. :
 :

Petitioners Charles and Joseph Costa, doing business as International House of Pancakes #4639, 155-17 Northern Boulevard, Flushing, New York 11354, 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 June 1, 1976 through May 31, 1978 (File No. 32563).

Petitioner International House of Pancakes, 155-17 Northern Boulevard, Flushing, New York 11354, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1976 (File No. 30965).

Petitioner Joseph Costa, 508 Tether Lane, Paramus, New Jersey 07652, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1976 (File No. 30764).

Petitioners Charles and Arlene Costa, 8 Glen Court, Hawthorne, New Jersey 07506, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York for the year 1976 (File No. 30885).

A consolidated formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 13, 1984 at 10:00 A.M., with all briefs to be submitted by November 29, 1984. Petitioners appeared by Gerald M. Cotter, Esq. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether in the conduct of a sales tax audit of International House of Pancakes, the Audit Division properly utilized guest checks and register readings for one day to make projections for the entire period June 1, 1976 through May 31, 1978.

FINDINGS OF FACT

1.(a) Subsequent to the conduct of a field examination, the Audit Division issued to petitioners Charles and Joseph Costa, doing business as International House of Pancakes #4639 ("IHOP #4639"), two notices of determination and demands: the first, dated December 27, 1979, covered the period June 1, 1976 through May 31, 1977 and was in the amount of \$97,053.53, plus penalty and interest; the second, under date September 8, 1980, covered the period June 1, 1977 through May 31, 1978 and assessed taxes in the sum of \$100,589.76, plus penalty and interest. On July 30, 1979, Joseph Costa had executed on behalf of IHOP #4639 a consent extending the period of limitations for assessment of tax for the period June 1, 1976 through May 31, 1979 to and including December 31, 1979.

(b) The Audit Division treated the additional sales found by the sales tax examination as additional gross receipts realized by the partnership, International House of Pancakes. Consequently, on April 11, 1980, the Audit Division issued a Notice of Deficiency to the partnership, asserting unincorporated business tax under Article 23 of the Tax Law for the year 1976 in the amount of \$64,270.61, plus penalty and interest.

(c) Finally, the Audit Division augmented the taxable income of the partners, Joseph Costa and Charles Costa, to take account of their alleged

additional distributive shares of partnership income. On April 11, 1980, the Audit Division issued to petitioner Joseph Costa ("Joseph") a Notice of Deficiency, asserting New York State personal income tax under Article 22 of the Tax Law and New York City nonresident earnings tax under Chapter 46, Title U of the Administrative Code of the City of New York in the amount of \$92,126.27, plus penalty and interest. On the same date, the Audit Division issued to petitioners Charles and Arlene Costa a Notice of Deficiency, asserting personal income tax and nonresident earnings tax of \$90,830.02, plus penalty and interest.

2. IHOP #4639 is a restaurant operated under a franchise granted by International House of Pancakes, Inc. ("IHOP, Inc."). The restaurant is open for business from 7:00 A.M. until midnight Sunday through Thursday and from 7:00 A.M. until 2:00 A.M. on Friday and Saturday, and has a seating capacity of 84. Pursuant to the franchise agreement, IHOP #4639 remits a monthly rental, service fee and national advertising fee to IHOP, Inc., with each payment computed as an established percentage of the restaurant's gross volume. To ensure compliance with the franchise agreement, IHOP, Inc. engages independent examiners to audit the franchised restaurants.

3. The sales tax examination which resulted in the assessments and the deficiencies under consideration was precipitated by an anonymous letter, informing the Audit Division that guest checks totalling \$8.00 or more were not rung up on the cash register on Saturdays, Sundays and holidays and checks in excess of \$20.00 were never rung up. In an effort to verify this information, eleven Audit Division employees patronized the restaurant for breakfast on May 14, 1979, a Saturday; the guest check inclusive of sales tax totalled \$32.62 and was not rung up on the register in the presence of the Audit Division employees.

4. On or about May 17, 1979, the Audit Division forwarded a notification to IHOP #4639, to the attention of Joseph, advising that a multi-tax examination was to be conducted commencing June 14, 1979 and requesting access to the following records, among others: purchase invoices, sales invoices, expense invoices, guest checks, register tapes and bank statements for the quarterly period March 1 through May 31, 1979; the general ledger; and the cash receipts and cash disbursements journals. Petitioners' accountant requested postponement of the appointment because of Joseph's unavailability on the scheduled date.

5. The examination was rescheduled for and the examiners began the audit on July 30, 1979. Records available on that date consisted of the cash receipts and cash disbursements journals. Joseph also demonstrated for the examiners the operation of the "documentor", which accumulates daily sales. Guest checks list menu items available (e.g., sausage and eggs, steak sandwich) followed by numbers in brackets; upon a customer's order, the waiter or waitress draws a line through the appropriate item (e.g., one order of buttermilk pancakes). At the end of the meal, the customer presents the guest check to the cash register operator who inserts the check into the documentor twice: once to read the lined-out items and the second time for the printing out of the sale amount, sales tax amount and total amount due. The total amount due is then rung up on the cash register. At regular intervals, 11:30 A.M., 2:30 P.M., 5:00 P.M., 8:30 P.M., 10:00 P.M. and midnight (and also at 3:00 A.M. on Fridays and Saturdays), using the documentor, Joseph takes readings of the restaurant's gross sales and records the readings on daily register reading report forms submitted to IHOP, Inc., along with a tape produced by the documentor during the addition operation. IHOP, Inc. relies on these reports and tapes in

preparing IHOP #4639's sales and use tax returns. Joseph also furnished the examiners with samples of guest checks and documentor summary reports.

The examiners specifically requested completed guest checks for the test period selected (March 1 through May 31, 1979) but were informed that guest checks were forwarded to the IHOP, Inc. principal office in North Hollywood, California.

During the July 30, 1979 appointment, the examiners obtained carbon copies of transmittal sheets which recapitulate the restaurant's weekly activities, including sales, purchases, payroll and franchise payments; the originals are forwarded to IHOP, Inc.

By letter to IHOP, Inc. dated July 31, 1979, the Audit Division requested the guest checks of IHOP #4639 for the test period.

6. When the examiners learned from IHOP, Inc. that guest checks were in fact retained by the individual restaurants, they renewed their request of Joseph for such documents. The examination then continued on September 4 and again on October 2 and November 18, 1979. On September 4, Joseph provided the examiners guest checks bound by rubber bands in sequential batches of fifty and stored in no particular order in a carton. The examiners attempted to arrange the guest checks in chronological order. Because the largest number of guest checks were used on August 18, 1979, the examiners concluded that the checks were complete for that date. (The guest checks were in actuality dated September 18, 1979 but Joseph advised the examiners that the documentor had dated them erroneously.) On October 2, Joseph provided the examiners with carbon copies of transmittals for the years 1976 and 1977 which the examiners referred to in endeavoring to arrive at purchases for the test quarter. On November 18, the examiners obtained the bank records of the partnership and from IHOP, Inc., the

register reading report forms and the documentor-generated tapes for the test period.

7. Given that the extension of the period of limitations for assessment was due to expire on December 31, 1979, the examiners requested Joseph to execute a further extension of one year. On the advice of his accountant, he refused to so extend the statute. The examiners concluded that they had no alternative but to employ the records they had in their possession to arrive at an estimated assessment.

(a) The examiners reconciled sales per books to the partnership returns for the years 1977 and 1978.

(b) Purchases as reflected in the cash disbursements journal from June 1, 1976 through December 31, 1977 and in the general ledger for 1978 were compared with purchases disclosed on the partnership returns; purchases per books exceeded purchases on the 1978 return by 41.89 percent.

(c) Fixed asset acquisitions were ascertained from the partnership returns and cash disbursements journal. Tax of \$511.85 was found due on purchases of \$10,857.00. Tests of expense purchases could not be completed due to time constraints.

(d) The examiners compared the guest checks dated August 18, 1979 with the documentor-generated tape for the same date and calculated an understatement of taxable sales of 199.55 percent ($\$11,322.28/\$3,779.80$). Application of this rate to taxable sales reported during the period under consideration resulted in sales tax due of \$197,131.44. The examiners also verified that the meals purchased by the Audit Division employees on May 14, 1979 for \$32.62 did not appear on the documentor tape for that date.

8. In opposition to the assessments and deficiencies, petitioners maintain that: (a) the Audit Division's use of a test period was unwarranted in view of "the volume and availability of detailed documentation" concerning the restaurant's business activities; (b) taxable sales of \$11,322.38 as reflected in the guest checks for August 18, 1979 actually represented a full week's receipts; and (c) this restaurant has never been cited by IHOP, Inc. for underreporting income even though "thorough, frequent and detailed examinations" have been performed. Petitioners offered in evidence a letter from IHOP, Inc. which stated, "[T]he average IHOP sales in the month of August 1979 were \$9,128, and in September 1979 \$8,289"; it cannot be determined from the letter or its attachment whether the figures recited are daily, weekly or monthly averages. Petitioners also offered a letter from W. M. Murray & Associates, Inc. under date August 21, 1980, stating that the firm of management examiners had scheduled an audit on August 29, 1980 to verify the reported gross sales of a franchisee, referred to as "IHOP #46-" with a blank space following the two digits and hyphen. (A spot of correction fluid appears after "#46-".)

CONCLUSIONS OF LAW

A. That the inadequacy of the record keeping procedures of the restaurant is clearly established by the evidence. Restaurant personnel did not ring up on the cash register a sale made to Audit Division employees in the course of an observation test, and petitioners were unable to produce for the verification of taxable sales guest checks for the audit period, or even, for that matter, guest checks for any quarter falling within the audit period. Furthermore, petitioners failed to demonstrate any error in the audit methodology, which relied directly upon guest checks and documentor readings for August 18, 1979.

Petitioners' claim that such guest checks represented a week's receipts is unsupported by either the guest checks themselves or the letter from IHOP, Inc.

B. That inasmuch as the sales tax examination and its results were proper and correct, the use of such results as a basis to assert an unincorporated business tax deficiency against the partnership International House of Pancakes and to assert New York State personal income tax and New York City nonresident earnings tax deficiencies against the partners was likewise appropriate. (See Matter of William T. Kelly, State Tax Commission, December 31, 1984; Matter of Carmen and Adelia Garzia, State Tax Commission, June 29, 1983.)

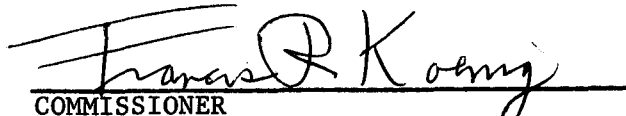
C. That the petition of Charles and Joseph Costa doing business as International House of Pancakes #4639 is denied, and the assessments issued on December 27, 1979 and September 8, 1980 are sustained. The petition of International House of Pancakes is denied, and the Notice of Deficiency issued on April 11, 1980 is sustained. The petition of Joseph Costa is denied, and the Notice of Deficiency issued on April 11, 1980 is sustained. The petition of Charles and Arlene Costa is denied, and the Notice of Deficiency issued on April 11, 1980 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 28 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 169 974

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>International House of Pancakes</i>	
Street and No. <i>155-17 Northern Blvd.</i>	
P.O., State and ZIP Code <i>Flushing NY 11354</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

P 693 169 978

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Charles & Orleans Cante</i>	
Street and No. <i>8 Swan Ct.</i>	
P.O., State and ZIP Code <i>Hawthorne N.J. 07506</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

P 693 169 975

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Federal M. Carter</i>	
Street and No. <i>560 Northern Blvd. Suite 201</i>	
P.O., State and ZIP Code <i>Flushing N.Y. 11352</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

P 693 169 977

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Joseph Costa</i>	
Street and No. <i>508 Tether Lane</i>	
P.O., State and ZIP Code <i>Paramus N.J. 07652</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

P 693 169 976

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Charles & Joseph Costa</i>	
Street and No. <i>414 I HOP</i>	
P.O., State and ZIP Code <i>155-17 Northern Blvd</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982