

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

February 6, 1985

Warchem, Inc.
5 E. 8th St.
New York, NY 10003

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
Morris Turetzky
Turetzky, Sternheim & Co.
114 Liberty St.
New York, NY 10006
Taxing Bureau's Representative

was June 15, 1979 and a bulk sales tax of \$400.00 was paid by the purchaser on fixed assets of \$5,000.00.

2. On September 6, 1979, the Audit Division, based on the findings of a field audit of petitioner's records through the period August 31, 1975, issued to petitioner a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for tax due of \$36,923.07, plus penalty of \$5,963.98 and interest of \$5,121.52, for a total amount due of \$48,008.57 for the period June 1, 1976 through June 15, 1979.

3. The Audit Division, as a result of additional information, discovered during the field audit that petitioner had operated a luncheonette which was discontinued on October 14, 1977. As a result of this information, the liability of Warchem, Inc. was reduced for the period September 1, 1977 through June 15, 1979. Accordingly, on December 1, 1981, the Audit Division issued to petitioner a Notice of Assessment Review for adjusted tax due of \$20,189.23, plus penalty and interest of \$6,400.01, for a total amount due of \$26,589.24.

4. On January 6, 1981, petitioner's representative filed a petition in reference to the Notice of Assessment Review. Petitioner did not claim that it never received the notice dated September 6, 1979. Both notices and the petition indicated the same address for petitioner.

5. Petitioner's representative alleged that, at the time of the mailing of the notice dated September 9, 1979, a strike was in progress by the union employees of a restaurant located next to the premises of petitioner. They were purportedly not allowing anybody in or out of the building and the surrounding stores were closed due to the strike. Consequently, it was alleged that petitioner was not receiving any mail and did not receive the notice. The strike lasted approximately 30 days. The petitioner failed to present any

documentary or other substantial evidence to support these allegations. It was further alleged that the notice was probably returned to Albany. There is no evidence in the file to indicate that the notice was returned to Albany.

6. On July 29, 1980, petitioner resold the business to Chang's Chemist, Inc.

CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in part, that a notice of determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving notice of such determination, shall apply to the Tax Commission for a hearing.

B. That petitioner failed to comply with section 1138(a)(1) of the Tax Law. Therefore, the taxes due were finally and irrevocably fixed. However, based on the Notice of Assessment Review, the tax due has been adjusted to \$20,189.23.


C. That since a timely petition was not filed, the State Tax Commission does not have jurisdiction to render a decision with respect to Issue II.

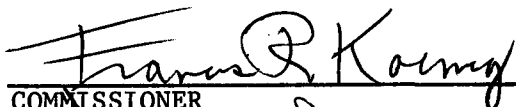
D. That the petition of Warchem, Inc. is denied and the adjusted tax due is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 06 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982
* U.S.G.P.O. 1983-403-517

Sent to <i>Warchem Inc.</i>	
Street and No. <i>3 E 84th St</i>	
P.O., State and ZIP Code <i>New York, NY 10003</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	

P 693 169 512

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982
* U.S.G.P.O. 1983-403-517

Sent to <i>Mavis Turetzky</i>	
Street and No. <i>Turetzky Sternheim & Co.</i>	
P.O., State and ZIP Code <i>117 Albany St</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	