

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
STEPHEN KOW,	:	DECISION
OFFICER OF HONG KONG T.V. VIDEO PROGRAM, INC.	:	DTA NO. 802337
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, 1982 through November 30, 1984	:	

The Division of Taxation by letter to the Tax Appeals Tribunal opposed petitioner's request to vacate the Default Determination of the Chief Administrative Law Judge. The Division of Taxation alleges that petitioner has neither shown a meritorious case nor an excuse for said Default.

The Tax Appeals Tribunal, after reviewing the complete record contained in the file, affirms the Order of the Chief Administrative Law Judge.

FINDINGS OF FACT

In this case, a hearing on the petition was scheduled on Thursday, October 29, 1987 at 1:15 p.m. at the Office of the State Tax Commission, Two World Trade Center, New York, New York. Notice of said hearing was given to petitioner and petitioner failed to appear or communicate either by telephone or by letter with either the Division of Taxation or the Administrative Law Judge. The hearing was held, petitioner's default was duly noted and on motion of the Division of Taxation the Administrative Law Judge on December 17, 1987 issued

a Default Determination ordering that the petition of Stephen Kow, Officer of Hong Kong T.V. Video Program, Inc. be denied.

Petitioner, on January 19, 1988, filed with the Tribunal a Notice of Exception to the Administrative Law Judge's Determination.

On January 25, 1988, February 9, 1988 and again on March 25, 1988 petitioner was notified and offered an opportunity to make written application to the Chief Administrative Law Judge to vacate the Default Order. Since petitioner failed to respond to the above notices, the Chief Administrative Law Judge, on April 28, 1988, denied the petitioner's request to vacate the Default Order.

However, by letter dated April 20, 1988 (envelope postmarked 5/3/88) and received by the Division of Tax Appeals on May 10, 1988, petitioner replied to the March 25, 1988 letter. Further, on May 12, 1988 petitioner filed a Notice of Exception to the Administrative Law Judge's Determination and requested oral argument. Oral argument was denied on July 28, 1988 and petitioner was so notified.

OPINION

Part 3000 of the Rules of Practice and Procedure of the Tax Appeals Tribunal and, more specifically, 3000.10(b)(3) states:

"Upon written application to the supervising administrative law judge, a default determination may be vacated where the party shows an excuse for the default and a meritorious case."

The petitioner, Stephen Kow, Officer of Hong Kong T.V. Video Program, Inc., failed to present a reasonable excuse or even submit evidence of a meritorious case for consideration by the Tribunal. The petitioner, in filing his Notice of Exception merely changed the date of the

Determination and enclosed copies of three previous letters, all of which lacked either information or material which would substantiate a meritorious case and a reasonable excuse for failure to appear at the October 29, 1987 hearing.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The request of petitioner to vacate the Default Determination of the Chief Administrative Law Judge is denied; and
2. The petition of Stephen Kow, Officer of Hong Kong T.V. Video Program, Inc. is denied.

Dated: Albany, New York
December 15, 1988

/s/ John P. Dugan
President

/s/ Francis R. Koenig
Commissioner