

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Kum Tong Wong :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1972. :

State of New York

County of Albany

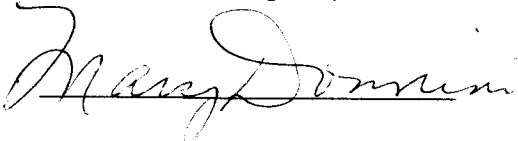
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Kum Tong Wong, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

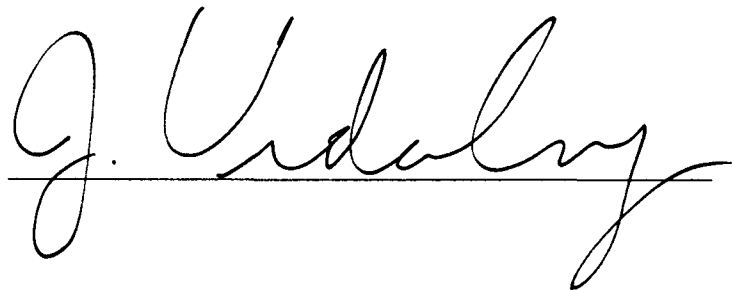
Kum Tong Wong
17 Ludlow St.
New York, NY

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
31st day of August, 1979.


Mary Dominici


J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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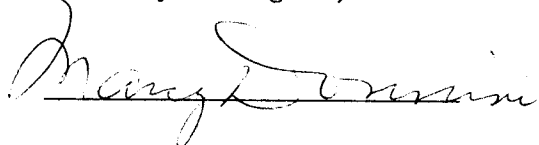
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Herbert K. C. Liu the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

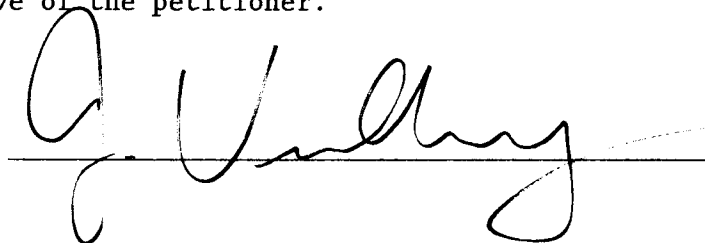
Mr. Herbert K. C. Liu
Eng. Achson & Co., Inc.
24 E. Broadway
New York, NY 10002

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 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
31st day of August, 1979.


Mary Dominici


Jay Vredenburg



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

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

Kum Tong Wong
17 Ludlow St.
New York, NY

Dear Mr. Wong:

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 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
Herbert K. C. Liu
Eng. Achson & Co., Inc.
24 E. Broadway
New York, NY 10002
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KUM TONG WONG	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1972.	:	
	:	

Petitioner, Kum Tong Wong, 17 Ludlow Street, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 (File No. 12821).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 13, 1978 at 11:15 A.M. Petitioner appeared with his interpreter and representative, Herbert K. C. Liu. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect, truthfully account for and pay over New York State withholding taxes of Hoi Tsen Restaurant Corporation for the periods May 1, 1972 through May 31, 1972 and July 1, 1972 through December 31, 1972.

FINDINGS OF FACT

1. On June 30, 1975, the Income Tax Bureau issued a Notice of Deficiency against Kum Tong Wong imposing a penalty of \$640.80, which amount was equal to the amount of unpaid New York State withholding taxes due from Hoi Tsen Restaurant Corporation for the periods May 1, 1972 through May 31, 1972 and July 1, 1972 through December 31, 1972.

2. Petitioner, Kum Tong Wong, timely filed a petition for redetermination of a deficiency or for refund of personal income taxes for said period, alleging that he was not a responsible officer of the subject corporation and, therefore, was not liable for the penalty assessed.

3. Petitioner had invested \$10,000.00 of his own money with Chun Yan Li and Harry D. Haw to form Hoi Tsen Restaurant Corp. which operated a Chinese restaurant and bar at 4435 Austin Boulevard, Island Park, New York 11558.

4. Of the three investors, petitioner was the only U.S. citizen, which is a requirement for obtaining a liquor license. Petitioner allowed his name to be used as the licensee of the liquor license. He also agreed to be treasurer of the corporation. Mr. Chun Yan Li managed the corporation as president and Mr. Harry D. Haw was a part-time employee-cashier and served as secretary of the corporation. Petitioner, Kum Tong Wong, contended that he was a silent investor who did not participate in any of the operations of the restaurant.

5. Petitioner, Kum Tong Wong, never handled or directed payroll matters and contended that he did not have access to the books or records of the corporation. When the restaurant went out of business, petitioner suffered the total loss of his \$10,000.00 investment.

CONCLUSIONS OF LAW

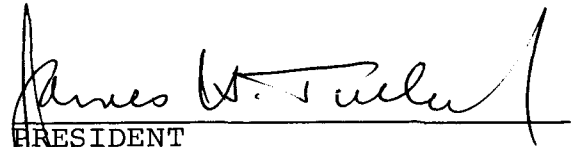
A. That petitioner, Kum Tong Wong, was a person required to collect, truthfully account for and pay over New York State income tax withheld by Hoi Tsen Restaurant Corp. for the periods at issue in the sum of \$640.80, and that he willfully failed to do so, within the meaning of subdivisions (g) and (n) of section 685 of the Tax Law. Accordingly, petitioner is subject to a penalty equal to said sum under subsection (g) of section 685 of the Tax Law.

B. That the petition of Kum Tong Wong is denied and the Notice of Deficiency issued June 30, 1975 is sustained.

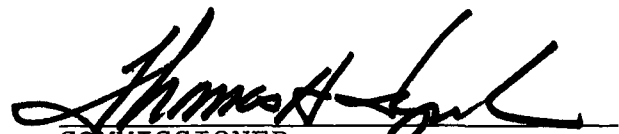
DATED: Albany, New York

STATE TAX COMMISSION

AUG 31 1979


PRESIDENT


COMMISSIONER


COMMISSIONER