

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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| In the Matter of the Petition | : | |
| of | : | |
| MARC ZACCARIA | : | DETERMINATION ON REMAND |
| for Revision of a Determination or for Refund of Cigarette Tax under Article 20 of the Tax Law for the Period November 6, 2003. | : | DTA NO. 819994 |
| | : | |

Petitioner, Marc Zaccaria, filed a petition for revision of a determination or for refund of cigarette tax under Article 20 of the Tax Law for the period November 6, 2003.

Following a hearing and the submission of briefs, Timothy J. Alston, Administrative Law Judge, issued a determination dated June 22, 2006 which denied the petition and sustained a Notice of Determination dated February 23, 2004.

At the time of the hearing petitioner also faced criminal charges involving the same transaction which was the subject of the petition.

Petitioner filed an exception to the determination and in a decision dated December 20, 2007, the Tax Appeals Tribunal remanded this matter to the administrative law judge "to afford petitioner the opportunity to present his case in the absence of pending criminal proceedings," such proceedings having finally been resolved on February 28, 2006.

In accordance with the Tribunal's decision, this matter was called to hearing before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, New York, on May 7, 2008 at 1:30 P.M. Petitioner appeared by

Allan B. Cruikshank, Jr., Esq. The Division of Taxation appeared by Daniel Smirlock, Esq. (Michelle M. Helm, Esq., of counsel).

Petitioner, Marc Zaccaria, was not personally present at the hearing on May 7, 2008 and petitioner's representative offered no evidence at said hearing.

Accordingly, in the absence of any additional evidence, the petition of Marc Zaccaria is denied and the Notice of Determination dated February 23, 2004 is sustained.

DATED: Troy, New York
July 10, 2008

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE