

MEMORANDUM
DeVita, Joseph
Cigarette Tax
1975

TO : State Tax Commission

FROM : Peter Crotty, Deputy Commissioner and Counsel

SUBJECT: Cigarette Tax Determination -
Joseph DeVita

Transmitted herewith for review and approval by the Commission is a request to settle a hearing matter. Since the liability asserted is a penalty, there is discretion to remit pursuant to the authority granted the Commission under Section 481(1)(b) of the Tax Law.

In this matter there is both a hearing pending and collection action has been taken with respect to certain Totten trust bank accounts in the name of a decedent, Gladys Brown, with whom Mr. DeVita had been living. Although the Legal Enforcement Unit of this Bureau in New York City has levied on the proceeds of the bank accounts, there is still awaiting resolution a dispute between Mr. DeVita, as named beneficiary, and Marian Goldman, as administratrix of her sister's estate, as to the person entitled to the money.

The proposed stipulation before the Surrogate, which is dependent on the requested approval by the Commission, will settle the liability for the cigarette tax penalty which has been imposed as well as permitting the release of the funds to the parties' litigant. Copies of memoranda dated August 1, 1975 and July 9, 1975 set forth the background of this matter.

On the basis of the record of this proceeding to this point, and taking into account the fact that oral approval of Deputy Commissioner Schulman has been obtained, I recommend approval of the settlement proposed.

If the Commission concurs, approval should be shown at the foot hereof and the matter returned for completion.

MK:sc
Enc.
October 24, 1975

Peter Crotty
Deputy Commissioner and Counsel

