

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~
Application :
of :

MANDEL TOBACCO CO., INC. :

AFFIDAVIT OF MAILING
OF NOTICE OF ~~DECISION~~ ~~REDETERMINATION~~
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Cigarette Tax :
Taxes under Article ~~(a)~~ 20 of the :
Tax Law for the ~~(X) (a)~~ Period May 1, :
1970 through September 30, 1972.

State of New York
County of Albany

MARYLOU SAMUELS , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of April , 19 76, she served the within
Notice of ~~DECISION~~ (or Determination) by ~~(certified)~~ mail upon Mandel Tobacco Co., Inc.

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mandel Tobacco Co. Inc.
Henry F. Lyons Division
441 East 12th Street
New York, New York 10009

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
of) 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

29th day of April , 1976

Janet Mack

Marylou Samuels

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~
Application
of

MANDEL TOBACCO CO., INC.

For a Redetermination of a Deficiency or
a Refund of Cigarette Tax
Taxes under Article ~~(s)~~ 20 of the
Tax Law for the ~~Year(s)~~ Period May 1,
1970 through September 30, 1972.

AFFIDAVIT OF MAILING
OF NOTICE OF ~~DEFINITION~~ DETERMINATION
BY ~~CERTIFIED~~ MAIL

State of New York
County of Albany

MARYLOU SAMUELS, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of April, 1976, she served the within
Notice of ~~Determin~~ (or Determination) by ~~(certified)~~ mail upon Joseph A. Jacobson
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Joseph A. Jacobson, Esq.
16 Court Street
Brooklyn, N. Y. 11241
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

29th day of April, 1976.

Janet Mack

Mary Lou Marie Neil Samuels



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

Dated: Albany, New York
April 29, 1976

Mandel Tobacco Co. Inc.
Henry F. Lyons Division
441 East 12th Street
New York, New York 10009

Gentlemen:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section (X) **478** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **30 days**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
MANDEL TOBACCO CO. INC.	:	DETERMINATION
for a Hearing to Review a Determination	:	
of Cigarette Taxes Due under Article 20	:	
of the Tax Law for the Period May 1,	:	
1970 through September 30, 1972.	:	

Mandel Tobacco Co. Inc., with offices at 441 East 12th Street, New York, New York, filed an application under section 478 of the Tax Law for a hearing to review a determination of cigarette taxes due under Article 20 of the Tax Law for the period May 1, 1970 through September 30, 1972.

Said determination was issued under date of December 27, 1973, under File Number 845 and is in the amount, as stated on a "ten-day notice" of April 13, 1973, of \$3,244.50 tax due less a \$270.00 tax credit plus a \$8.78 penalty for a total of \$2,983.28.

A hearing was duly held on October 24, 1974, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. Applicant was represented by Joseph A. Jacobson, Esq., of Brooklyn, New York. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Alexander Weiss, Esq., of counsel.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether a cigarette tax is due on certain cigarettes stolen from the premises of the applicant.

FINDINGS OF FACT

1. Mandel Tobacco Co. Inc. is a wholesale tobacco and candy business that has premises at 441 East 12th Street, New York City. It is a registered agent to buy and affix cigarette stamps under section 472 of the Tax Law.

2. Mandel Tobacco Co. Inc. purchases cigarettes from manufacturers and sells them to licensed retailers. The cigarettes would be delivered by truck in cases of sixty cartons each or in half-cases to the 441 East 12th Street premises and petitioner would re-deliver by his own truck to the retailers. He received shipments more than once a week and kept at least a week's supply on the premises.

3. Applicant's practice is to keep both stamped and unstamped cigarettes stored on its premises. It will stamp only so many of the cigarettes as it expects to sell "fairly soon". Stamps are applied by a meter. They do not require cancellation. The meter is reset by a local bank when convenient to applicant.

4. At or about 1:45 a.m. on September 27, 1972, the petitioner's premises were burglarized. Candy, cigars and cigarettes were stolen. The stolen cigarettes included six full cases of stamped cigarettes and thirty-two full cases and eighteen cartons of unstamped cigarettes. The unstamped cigarettes thus totaled 1,938 cartons consisting of 19,380 packages or 387,600 cigarettes.

5. Applicant employs a well-known protective agency and otherwise takes all reasonable precautions against theft.

6. The determination here in issue is for the State tax of fifteen cents a package or 19,380 packages for \$2,907.00. Other amounts in the determination have been satisfied.

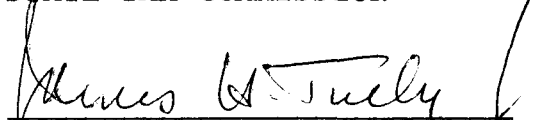
CONCLUSIONS OF LAW

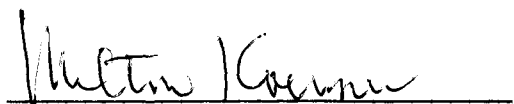
The cigarette tax is imposed "on all cigarettes possessed . . . for sale . . ." (Tax Law, section 471, subd. 1). All cigarettes are possessed for sale unless they are possessed for consumption and the burden of proving that is on the taxpayer. The fact that cigarettes are stolen does not show that they would not be resold.

The determination under review is correct.

DATED: Albany, New York
April 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER