

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MUSICAL MOMENTS, INC.

AFFIDAVIT OF MAILING

For a ~~Redetermination of a Deficiency or~~
~~a Revision of a Determination or a Refund~~
of License as a Wholesale Dealer of Cigarettes
Taxes under Article (x) 20 of the
Tax Law, ~~for the Year(s) or Period(s)~~

State of New York
County of Albany

Jean Wager, 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 16th day of August, 1976, she served the within Notice of Decision by ~~(certified)~~ mail upon Musical Moments, Inc. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Musical Moments, Inc.
2773 Webster Avenue
New York, New York 10007

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

16th day of August, 1976.

Jean Wager
Jean Wager

STATE OF NEW YORK
STATE TAX COMMISSION

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of
MUSICAL MOMENTS, INC.

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For a ~~Redetermination of a Deficiency or~~
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of License as a Wholesale Dealer of Cigarettes
Taxes under Article(s) 20 of the
Tax Law ~~for the Year(s) or Period(s)~~

State of New York
County of Albany

Jean Wager, 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 16th day of August, 1976, she served the within Notice of Decision by ~~(certified)~~ mail upon Jesse B. Hecht, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jesse B. Hecht, Esq.
299 Broadway
New York, New York 10007

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

16th day of August, 1976.

Janet Mack

Jean Wager



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 16, 1976

TELEPHONE: (518) 457-3850

Massical Moments Inc.
2773 Webster Ave.
Bronx, New York 10458

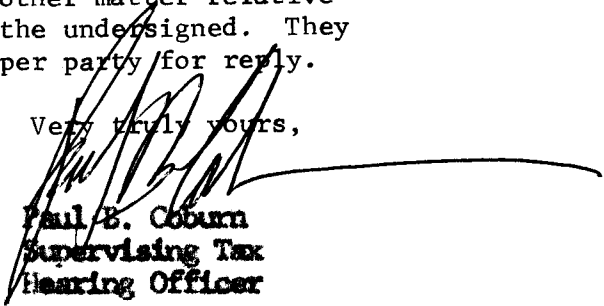
Gentlemen:

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

Please take further notice that pursuant to
Section(s) **478** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

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. They
will be referred to the proper party for reply.

Very truly yours,


Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MUSICAL MOMENTS, INC.	:	DECISION
for a License as a Wholesale Dealer of	:	
Cigarettes under Article 20 of the Tax	:	
Law.	:	

Petitioner, Musical Moments, Inc., filed an application for a license as a wholesale dealer of cigarettes pursuant to the provisions of Article 20 of the Tax Law. That application was disapproved. A formal hearing was then held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 16, 1976. Petitioner appeared by Jesse B. Hecht, Esq. The Miscellaneous Tax Bureau appeared by Peter J. Crotty, Esq., (James A. Scott, Esq., of Counsel).

ISSUE

Whether the application for a license as a wholesale dealer of cigarettes should be denied because Stephen Tarzanian, the President and a stockholder and a director of the applicant, was arrested for the unlawful possession of unregistered weapons, drugs, explosives and pornographic movies and was subsequently fined and paid \$50.00 for the possession of one unlicensed rifle.

FINDINGS OF FACT

1. The applicant, Musical Moments, Inc., applied to the Department of Taxation and Finance for a "License as Wholesale Dealer of Cigarettes," which said application was disapproved.

2. The applicant is a domestic corporation, organized in November, 1958.

3. Stephen Tarzanian, at the time of the aforesaid application and at the time of the hearing herein was the President, a stockholder and a director of the applicant.

4. The applicant's business involves the acquisition and installation of juke boxes, pool tables and amusement games in approximately 40 stores, including bars and grills, 39 of which are located in Bronx County and the sharing of income derived therefrom with the proprietors of the stores in which such juke boxes, pool tables and amusement games are placed.

5. On September 16, 1970, said Stephen Tarzanian reported to the Police Department that a "robbery" had occurred in his apartment.

6. Upon the arrival of a police officer at the apartment of Stephen Tarzanian on September 16, 1970, he reported to the police officer that a number of target rifles had been stolen.

7. The Police Department then made a search of the said Stephen Tarzanian's apartment and found a rifle, gun powder, ammunition, a "stag" film and drugs, to wit tranquilizers and one amphetamine pill.

8. Stephen Tarzanian was thereupon arrested and charged on September 16, 1970, with the offenses of possession of an unlicensed or unregistered rifle, explosives, ammunition, obscene material and dangerous drugs.

9. On April 16, 1971, all the aforesaid charges were dismissed except the offense of possession of an unlicensed or unregistered rifle and, as to that offense, the said Stephen Tarzanian was fined and paid the sum of \$50.00.

10. Stephen Tarzanian, prior to the time of the said "robbery" and arrest, possessed a total of 13 or 14 rifles, 12 or 13 of which were licensed or registered.

11. One of the hobbies in which said Stephen Tarzanian had engaged prior to said "robbery" and arrest was that of target rifle shooting and the aforesaid 13 or 14 rifles had been acquired over a period of years in connection with said hobby of target rifle shooting.

12. In connection with the said hobby of target rifle shooting it is customary for its practitioners to purchase gun powder for the purpose of making their own ammunition and the gun powder found in the apartment of said Stephen Tarzanian was purchased and used for said purpose in relation to said hobby.

13. The drugs found in the apartment of said Stephen Tarzanian, namely tranquilizers and an amphetamine pill, were prescribed by a doctor for his wife, from whom he was separated at the time of said arrest, but which were given by her to him to hold for her and "were kept in the medicine cabinet for years."

CONCLUSIONS OF LAW

A. That the offense for which the said Stephen Tarzanian was arrested on September 16, 1970, and for which he was fined \$50.00 on

April 16, 1971, namely the possession in his home of one unlicensed or unregistered rifle in a collection of 13 or 14 rifles used for target shooting, 12 or 13 of which were licensed or registered, when viewed in the context of the apparent purpose of the statute, Article 20 of the Tax Law, and the business of a wholesale dealer of cigarettes, is too remote in nature, locale and time, to support the disapproval of the application of Musical Moments, Inc., for a license as a wholesale dealer of cigarettes.

B. That for the same reasons the possession of gunpowder by the said Stephen Tarzanian at the time of said arrest does not support the disapproval of the said application of Musical Moments, Inc., for a license as a wholesale dealer of cigarettes since the said gunpowder was used for the purpose of making ammunition for the said rifles as an incident of their use in connection with the hobby of target shooting.

C. That the possession in the home of said Stephen Tarzanian at the time of his said arrest on September 16, 1970, of tranquilizers and an amphetamine pill is not a relevant reason for the disapproval of an application by Musical Moments, Inc., for a license as a wholesale dealer of cigarettes, inasmuch as it appears that said drugs were prescribed for the wife of said Stephen Tarzanian by a physician.

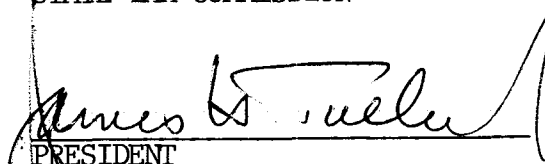
D. That the possession in the home of said Stephen Tarzanian at the time of his said arrest on September 16, 1970, of a "stag" film, when viewed in the context of the apparent purpose of the statute, Article 20 of the Tax Law and the business of a wholesale dealer of

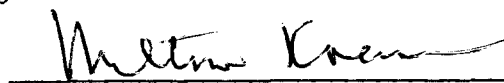
cigarettes, is too remote in nature, locale and time, to support the disapproval of the application of Musical Moments, Inc., for a license as a wholesale dealer of cigarettes.


E. That the disapproval of the Miscellaneous Tax Bureau of the Department of Taxation and Finance of the application by Musical Moments, Inc., for a license as a wholesale dealer of cigarettes is annulled and the application therefore is granted.

DATED: Albany, New York
August 16, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER