

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARCELLA DONNELLY

AFFIDAVIT OF MAILING

For ~~xxRedetermination of a Deficiency or~~
~~xx Revision of a Determination xxx Refund~~
of Cigarette Taxes due
Taxes under Article (x) 20 of the
Tax Law for ~~the Year(s) or Period(s)~~
August 1, 1974.

State of New York
County of Albany

Bruce Batchelor, 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 14th day of April, 1977, he served the within
Notice of Determination by (certified) mail upon Marcella Donnelly

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Ms. Marcella Donnelly
1806 Starr Street
Ridgewood, Queens, New York 11237

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

14th day of April, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 14, 1977

TELEPHONE: (518) **457-1723**

Ms. Marcella Donnelly
1806 Starr Street
Ridgewood, Queens, New York 11237

Dear Ms. Donnelly:

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 **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

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|--------------------------------------|---|---------------|
| In the Matter of the Application | : | |
| | : | |
| of | : | |
| | : | |
| MARCELLA DONNELLY | : | DETERMINATION |
| | : | |
| for Revision of a Determination of | : | |
| Cigarette Taxes due under Article 20 | : | |
| of the Tax Law for August 1, 1974. | : | |

Applicant, Marcella Donnelly, 1806 Starr Street, Ridgewood, Queens, New York 11237, filed an application for revision of a determination of cigarette taxes due under Article 20 of the Tax Law. (File No. 11891).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 16, 1976, at 9:15 A.M. Applicant appeared by Eugene F. Mastropieri, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq., (Arnold Dorman, Esq. of counsel).

FINDINGS OF FACT

1. On June 27, 1975, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due Under Cigarette Tax Law against applicant, Marcella Donnelly, and/or Stefano Maniscalco in the amount of \$2,037.00, as penalty for 679 cartons of untaxed cigarettes seized on August 1, 1974.

2. On August 1, 1974, members of the Special Investigation Bureau of the Department of Taxation and Finance, together with the local police department, executed a search warrant of the premises at 1806 Starr Street, Ridgewood, Queens, New York and also of a 1968 Buick with license plate No. 927-SZH. They found 640 cartons of cigarettes in the basement of 1806 Starr Street, Ridgewood, Queens, New York and 49 cartons of cigarettes in the 1968 Buick, which was parked in front of these premises. None of the cartons of cigarettes bore a New York State tax stamp, only North Carolina tax stamps.

3. Applicant, Marcella Donnelly, rented the first floor at 1806 Starr Street, Ridgewood, Queens, New York, from the owner, Stefano Maniscalco, who resides on the second floor. He possessed the key to the basement. The 1968 Buick, license plate No. 927-SZH, registered to a Starr Corporation, belonged to Stefano Maniscalco's son but was under the control of Stefano Maniscalco.

4. When the untaxed cigarettes were found on June 27, 1975, the tax agents proceeded to place Stefano Maniscalco under arrest. During the search, he became ill and needed assistance. When he was about to be taken to jail, applicant, Marcella Donnelly, went to Stefano Maniscalco's aid and confessed to the ownership of the cigarettes.

5. On April 23, 1975, Marcella Donnelly and Stefano Maniscalco pleaded guilty to a charge of a misdemeanor relating to section 481.2 of the Tax Law in Queens Supreme Court and on May 23, 1975, the defendants were given a conditional discharge.

6. No documentary or other evidence was presented that applicant, Marcella Donnelly, was an agent authorized to affix tax stamps to untaxed cigarettes, nor a common or contract carrier or warehouseman lawfully transporting or storing untaxed cigarettes in New York State.

7. Applicant, Marcella Donnelly, did not present invoices, delivery tickets showing the names either of the seller or the purchaser, the quantity or brands, nor did she identify persons liable for the payment of taxes on the cigarettes in her possession. Applicant did not file a use tax return and pay the tax on the cigarettes within twenty-four hours of transporting them into New York State.

CONCLUSIONS OF LAW

A. That on August 1, 1974, applicant, Marcella Donnelly, possessed 679 cartons of untaxed cigarettes in violation of the provisions of Article 20 of the Tax Law.

B. That applicant, Marcella Donnelly, did not file a use tax return and pay the tax on 679 cartons of cigarettes as required by section 471-a of the Tax Law.

C. That applicant, Marcella Donnelly, was the person liable for payment of taxes on 679 cartons of untaxed cigarettes within the meaning and intent of section 481 of the Tax Law.

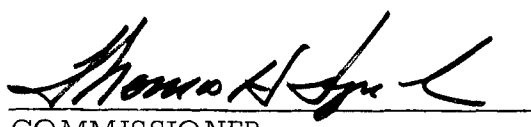
D. That the application of Marcella Donnelly is denied and the Notice of Determination of Tax Due Under Cigarette Tax Law issued June 27, 1975, against Marcella Donnelly and/or Stefano Maniscalco is sustained.

DATED: Albany, New York
April 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER