



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 26, 1977

Mr. Richard Freud
85-33 260th Street
Queens, New York


Dear Mr. Freud:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(§) **478** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Paul B. Coburn
Supervising Tax
Hearing Officer

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
RICHARD FREUD : DECISION
for Revision or Refund of Cigarette :
Taxes under Article 20 of the Tax Law. :
:

Applicant, Richard Freud, 85-33 260th Street, Queens, New York, filed an application for redetermination of cigarette taxes due under Article 20 of the Tax Law. (File No. 14056).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 15, 1976 at 2:45 P.M. The applicant appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Michael Weinstein, Esq., of counsel).

ISSUE

Whether the penalty of \$9,500.00 imposed on applicant, Richard Freud, for the possession of unstamped cigarettes, should be reduced.

FINDINGS OF FACT

1. On November 27, 1973, New York State investigators, accompanied by a New York City police officer and acting under

a search warrant, entered applicant, Richard Freud's apartment at 64-19 Broadway, Woodside, Queens, New York, and found 960 cartons, each containing 200 cigarettes in packages bearing North Carolina tax stamps, but without New York State tax stamps. The cigarettes were seized and the applicant was placed under arrest.

2. Applicant acted as "middleman" between the buyer and seller of the unstamped cigarettes. The cigarettes had been delivered to applicant's apartment by the seller, and were to be picked up by the buyer a few days later. Applicant was to be paid 15 to 20 cents per carton for his part in the transaction.

3. Applicant subsequently pleaded guilty in Criminal Court of the City of New York, County of Queens, to a charge of illegal possession of less than 100 cartons of unstamped cigarettes, a class A misdemeanor. He was fined \$500.00. In connection with said proceedings, he incurred an attorney's fee of \$700.00.

4. On January 21, 1974, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due under section 481.1(b) of the Tax Law, against the applicant. Said notice provided for a penalty of \$10.00 per carton on 950 out of the 960 cartons of cigarettes which were seized on November 27, 1973. The total amount determined to be due was \$9,500.00. Applicant protested the determination on January 28, 1974 and applied for a hearing.

5. Applicant is married and has three teenaged children. He earns \$14,000.00 to \$15,000.00 per year by doing electrical work. He no longer lives in the apartment in Woodside, but now owns his own home.

6. Applicant anticipates that the City of New York will impose a penalty equal to that imposed by New York State.

7. Applicant does not contest the assessment itself, but contends that the amount of the penalty is unreasonable and should be reduced.

CONCLUSIONS OF LAW

A. That 960 cartons of unstamped cigarettes were in the possession or under the control of applicant, Richard Freud, on November 27, 1973.

B. That under section 481.1(b) of the Tax Law, the State Tax Commission may impose a penalty of not more than \$100.00 for each 200 cigarettes in unstamped packages in excess of 2,000 such cigarettes in the possession or under the control of any person. Thus, the penalty imposed against the applicant could have been as much as \$100.00 per carton, or a total of \$95,000.00.

C. That although the State Tax Commission, in its discretion, may remit all or part of the penalty imposed under section 481.1(b) of the Tax Law, the record in this case does not justify a reduction in penalty to less than \$10.00 per carton or a total of \$9,500.00, the amount determined by the Miscellaneous Tax Bureau to be due.

D. That the application of Richard Freud is denied
and the Notice of Determination of Tax Due dated January 21,
1974 is sustained.

DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER