

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SIDNEY GAINES

AFFIDAVIT OF MAILING

~~For a Redetermination of a Deficiency or~~
~~a Revision of a Determination or a Refund~~
~~of~~ for a Hearing
~~Taxes~~ under Article (s) 20 of the
Tax Law for the Year (s) ~~or Period(s)~~ 1973

State of New York
County of Albany

John Huhn, 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 22nd day of September, 1977, she served the within
Notice of Decision by ~~(certified)~~ mail upon Sidney Gaines
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Sidney Gaines
539 East Pine Street
Long Beach, New York 11561
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

22nd day of September, 1977

Janet Mack

John Huhn



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

September 22, 1977

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

Mr. Sidney Gaines
539 East Pine Street
Long Beach, New York 11561

Dear Mr. Gaines:

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 ~~473~~ **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,

John J. Sollecito
Director
Tax Appeals Bureau

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SIDNEY GAINES	:	DECISION
for a Hearing under Article 20 of the	:	
Tax Law for the Year 1973	:	

Applicant, Sidney Gaines, 539 East Pine Street, Long Beach, New York 11561, filed an application for redetermination of a deficiency or for refund of cigarette taxes under Article 20 of the Tax Law for the year 1973. (File No. 17531).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 23, 1977 at 10:45 A.M. The applicant appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether an application filed in March of 1975 for redetermination of a cigarette tax assessment made on December 6, 1973 is timely, so as to entitle the applicant, Sidney Gaines to a formal hearing.

FINDINGS OF FACT

1. On December 6, 1973, the Miscellaneous Tax Bureau sent the applicant, Sidney Gaines, a Notice of Determination of Tax Due under Article 20, section 481-b of the Tax Law, assessing applicant the sum of \$29,000.00 based upon an alleged seizure of 1,170 cartons of cigarettes on September 18, 1973. A penalty of \$25.00 per carton had been assessed against 1,160 cartons of cigarettes.

2. Applicant, Sidney Gaines, conceded that he had received the Notice of Determination.

3. On March 6, 1975, applicant, Sidney Gaines, wrote to the Miscellaneous Tax Bureau in Albany, New York, seeking a hearing to protest Cigarette Tax Assessment #2462 made on December 6, 1973.

4. On May 13, 1977, a Notice of Formal Hearing was sent to the applicant, Sidney Gaines, advising him that a formal hearing had been scheduled for June 23, 1977 at the offices of the State Tax Commission, Two World Trade Center, New York, New York.

5. The applicant did nothing with respect to the cigarette tax assessment until 1975, by his own admission.

6. More than ninety days elapsed between the date of the assessment on December 6, 1973 and the application for a hearing on re-determination of the assessment in March of 1975.

CONCLUSIONS OF LAW

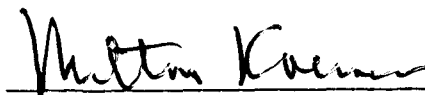
A. That section 478 of the Tax Law states that: "Any determination made pursuant to this section shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within ninety days after the giving of notice of such determination, apply to the tax commission for a hearing." Therefore, since applicant Sidney Gaines did not apply for a hearing within 90 days after the giving of the Notice of Determination, the application was untimely.

B. That the application of Sidney Gaines for redetermination of the cigarette tax assessed on Determination No. 2462 and dated December 6, 1973 is denied.

DATED: Albany, New York
September 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER