

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JEREMIAH HAMM

AFFIDAVIT OF MAILING

For ~~xxRedetermination of xx Deficiency xx~~  
a Revision ~~of xx Determination~~ or a Refund  
of Cigarette Taxes  
~~Taxes~~ under Article (x) 20 of the  
Tax Law ~~for the Year(s) xx Period(s) xx~~

State of New York  
County of Albany

Marsina Donnini, 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 July, 1977, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Jeremiah Hamm

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Jeremiah Hamm  
1217 Bronx River Avenue  
Bronx, New York

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)~~  
~~xx 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 July, 1977.

Marsina Donnini

Janet Mad

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JEREMIAH HAMM

AFFIDAVIT OF MAILING

For ~~xxRedetermination of xx Deficiency xx~~ :  
a Revision ~~of xx Determination xx~~ or a Refund :  
of Cigarette :  
Taxes under Article (s) 20 of the :  
Tax Law ~~for the xx (s) xx Period (s) xx~~ :

State of New York  
County of Albany

Marsina Donnini, 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 July, 1977, she served the within Notice of Determination by ~~(certified)~~ mail upon Fernando Fusco (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Fernando Fusco, Esq.  
Fusco & Fusco  
196 East 161st Street  
Bronx, New York  
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 July, 1977.

Marsina Donnini

Janet Mack



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

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

**July 22, 1977**

**Mr. Jeremiah Hamm  
1217 Bronx River Avenue  
Bronx, New York**

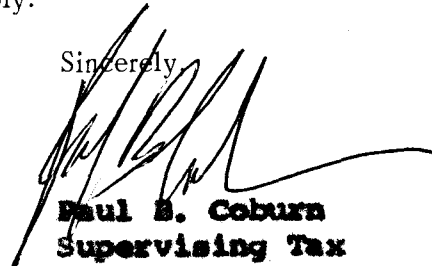
**Dear Mr. Hamm:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(B) 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: Petitioner's Representative  
  
Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Application :  
of :  
JEREMIAH HAMM : DETERMINATION  
for Revision or Refund of Cigarette Taxes :  
Under Article 20 of the Tax Law. :  
:

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 April 22, 1977 at 9:15 A.M. The applicant appeared by Fusco and Fusco (Fernando Fusco, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

Whether the penalty upon the applicant for unlawful possession of unstamped cigarettes was proper.

FINDINGS OF FACT

1. The applicant, Jeremiah Hamm, was never granted a wholesale dealer's license to sell cigarettes.

2. On March 4, 1976, the Miscellaneous Tax Bureau issued a penalty assessment against the applicant for unlawful possession on December 16, 1975 of unstamped cigarettes, imposing a penalty of \$3.00 per carton on 184 cartons of unstamped cigarettes subject to penalty, in the amount of \$552.00.

3. On December 16, 1975, the applicant, Jeremiah Hamm, did unlawfully have in his possession and under his control 18 cartons of cigarettes which were unstamped in violation of section 472 of the Tax Law.

4. The applicant was not convicted in Criminal Court of the City of New York for unlawful possession of unstamped cigarettes. Although arrested, the charge against him was adjourned in contemplation of dismissal, and was subsequently dismissed.

5. Applicant, Jeremiah Hamm, admitted possession of 18 cartons of untaxed cigarettes and did not object to the assessment upon 18 cartons.

CONCLUSIONS OF LAW

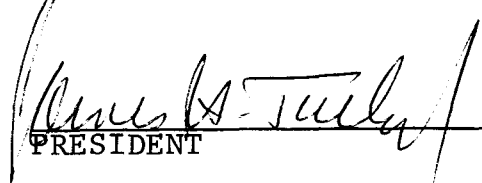
A. That on December 16, 1975 the applicant, Jeremiah Hamm, did unlawfully have in his possession 18 cartons of unstamped cigarettes in violation of Article 20 of the Tax Law.

B. That a penalty of \$3.00 per carton imposed pursuant to section 481 of the Tax Law was reasonable and proper, but should have been imposed on 18 cartons and not 184 cartons.

C. That the application of Jeremiah Hamm is hereby granted to the extent that the assessment be computed on the 18 cartons seized at \$3.00 per carton; that the Miscellaneous Tax Bureau is hereby directed to accordingly modify the assessment dated March 4, 1976; and that except as so granted the application is in all other respects denied.

DATED: Albany, New York  
July 22, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER