

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HARDER'S EXPRESS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Cigarette :
Taxes under Article (x) 20 of the :
Tax Law for the Year(s) ~~on Period(s)~~ :
1974

State of New York
County of Albany

Bruce Batchelor , 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 7th day of June , 19 77, she served the within
Notice of Determination by ~~(certified)~~ mail upon Harder's Express, Inc.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harder's Express, Inc.
Route 9-H
Claverack, New York 12513

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)~~
~~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

7th day of June , 19 77

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARDER'S EXPRESS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Cigarette :
Taxes under Article (22) 20 of the :
Tax Law for the Year (~~XXXXXXX~~) :
1974

State of New York
County of Albany

Bruce Batchelor , 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 7th day of June , 1977, ~~she~~ served the within
Notice of Determination by (~~certified~~) mail upon Jeremiah F. Manning,
& Knauf, Esqs. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jeremiah F. Manning, Esq.
Ainsworth, Sullivan, Tracy & Knauf, Esqs.
75 State Street
Albany, 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

7th day of June , 1977.

Bruce Batchelor

Janet Mack



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

June 7, 1977

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

Harder's Express, Inc.
Route 9-H
Claverack, New York 12513

Gentlemen:

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

Please take further notice that pursuant to
Section ~~(a)~~ **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,

Enc.

cc: Petitioner's Representative.

PAUL B. COBURN
Supervising Tax
Hearing Officer

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
HARDER'S EXPRESS, INC.	:	DETERMINATION
for Revision or for Refund of Cigarette	:	
Taxes under Article 20 of the Tax Law	:	
for the Year 1974.	:	

Harder's Express, Inc. which maintains its principal business office at Route 9-H, Claverack, New York 12513, filed an application for revision or for refund of cigarette taxes under Article 20 of the Tax Law for the year 1974. (File No. 13873).

A formal hearing was held at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, before Louis M. Klein, Hearing Officer, on December 15, 1976 at 2:45 P.M.

The applicant appeared by Ainsworth, Sullivan, Tracy & Knauf, Esqs., 75 State Street, Albany, New York, (Jeremiah F. Manning, Esq. of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alfred Rubenstein, Esq. of counsel).

ISSUE

Whether a common carrier is liable for cigarette tax under Article 20 of the Tax Law, for cigarettes stolen while in the custody of the common carrier, en route to point of destination.

FINDINGS OF FACT

1. Harder's Express, Inc. is a domestic corporation organized under the laws of the State of New York, and maintains its principal place of business within the State of New York.

2. Harder's Express, Inc. was engaged in business as a common carrier.

3. On December 14, 1973, Harder's Express, Inc. took possession of a quantity of cigarettes from R. J. Reynolds Tobacco Company, at Albany, New York, for delivery to Three Star Distributions, Inc. at Poughkeepsie, New York.

4. While such cigarettes were in possession of the taxpayer, Harder's Express, Inc., a quantity thereof were stolen on or about the 17th day of December, 1973.

5. The cigarettes in question were all unstamped.

6. The taxpayer had in its possession bills of lading during transport.

7. The Miscellaneous Tax Bureau acting pursuant to Article 20 of the Tax Law issued a determination against Harder's Express, Inc. imposing tax upon such taxpayer in the amount of \$450.00.

8. Section 470(3) of the Tax Law defines "Sale" as meaning "any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement therefor."

9. Section 471(1) of the Tax Law provides in part, as follows: "It shall be presumed that all cigarettes within the state are subject to tax until the contrary is established, and the burden of proof that any cigarettes are not taxable hereunder shall be upon the person in possession thereof."

CONCLUSIONS OF LAW

A. That the presumption that all cigarettes within the state are subject to tax until the contrary is established, when applied to the definition of "Sale" contained in section 470(3) of the Tax Law, renders the cigarettes in question subject to taxation by the State of New York.

B. That the cigarettes in question were apparently stolen. Therefore, there was a transfer of possession

"by any means whatever," so as to satisfy the definition of sale as contained in section 470(3) of the Tax Law.

C. That were it the intention of the State Legislature to exclude common or contract carriers from liability to pay tax upon unstamped cigarettes, it would have expressly excluded them from such liability imposed by section 471 of the Tax Law, within such section as it did from the payment of penalties for the transportation of unstamped cigarettes, under section 481 of the Tax Law.

D. That the burden of proof in overcoming the presumption that all cigarettes within the State of New York are taxable is upon the person in possession of those cigarettes, namely, the taxpayer, who failed to meet that burden.

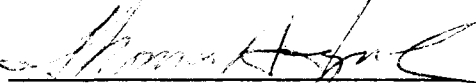
E. That the method of determining the amount of tax due is uncontroverted, and it is therefor established that the determination of the cigarette tax due is correct, and the application for a revision or refund is denied.

DATED: Albany, New York
June 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER