

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT LIOTTO

AFFIDAVIT OF MAILING

~~For a Hearing~~  
~~under Article (x) 20 of the~~  
~~Tax Law for the Year (x) 1974.~~  
For a Hearing  
under Article (x) 20 of the  
Tax Law for the Year (x) 1974.

State of New York  
County of Albany

John Huhn, 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 29th day of September, 1977, he served the within  
Notice of Decision by (certified) mail upon Robert Liotto

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

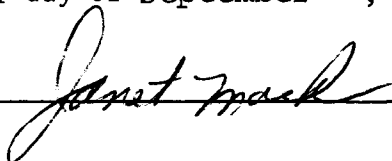
as follows: Mr. Robert Liotto  
54 McDonald Street  
Staten Island, New York

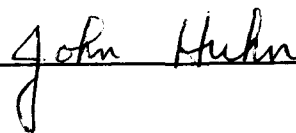
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
(x) 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

29th day of September, 1977.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT LIOTTO

AFFIDAVIT OF MAILING

~~xxxxxx Return of Tax of xxx Deficiency xxx~~ :  
~~xxxxxx Return of Tax of xxx Deficiency xxx~~ :  
For a Hearing :  
under Article (x) 20 of the :  
Tax Law for the Year (xxxxxx Period) 1974. :

State of New York  
County of Albany

John Huhn, 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 29th day of September, 1977, he served the within  
Notice of Decision by (xxxxxx) mail upon Frederick Mandel

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

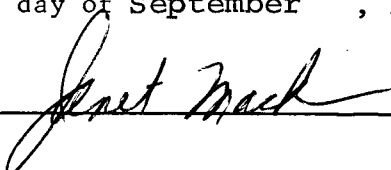
as follows: Frederick Mandel, Esq.  
Zelby, Burstein, Bernstein & Hartman  
One World Trade Center  
New York, New York 10048

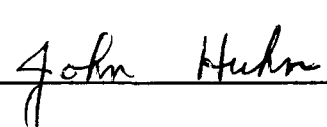
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

29th day of September, 1977.







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

**September 29, 1977**

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

**Mr. Robert Liotto  
54 McDonald Street  
Staten Island, New York**

**Dear Mr. Liotto:**

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(s) **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

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In the Matter of the Application

of

ROBERT LIOTTO

For a Hearing under Article 20 of the  
Tax Law for the Year 1974.

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DECISION

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Applicant, Robert Liotto, 54 McDonald Street, Staten Island, New York, filed an application for revision of a determination or for refund of cigarette tax under Article 20 of the Tax Law for the year 1974. (File No. 15351).

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 May 17, 1977 at 3:15 P.M. The petitioner appeared by Zelby, Burstein, Bernstein & Hartman, Esq. (Frederick Mandel, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

#### ISSUES

I. Whether the application for a hearing on a redetermination of a cigarette tax assessment was made within the limitation of time set forth in Article 20 of the Tax Law.

II. Whether the determination of cigarette tax assessed against the applicant had been properly made in accordance with law.

FINDINGS OF FACT

1. On March 20, 1974, the Miscellaneous Tax Bureau mailed a Notice of Determination of Cigarette Tax Due under section 481-b of Article 20 of the Tax Law, assessing Robert Liotto and another for 5,700 cartons of cigarettes allegedly seized on February 5, 1974. A penalty of \$100.00 per carton was assessed against applicant, Robert Liotto, for 5,690 carton for a total tax due of \$569,000.00.

2. On October 10, 1974, the attorney representing applicant, Robert Liotto, sent a letter to the Miscellaneous Tax Bureau in Albany, New York, seeking an appointment to discuss the assessment. This letter was deemed an application for a hearing on redetermination of Assessment No. 2555 dated March 20, 1974.

3. On April 8, 1977, a Notice of Formal Hearing was sent to applicant, Robert Liotto and his attorney, scheduling a hearing at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 17, 1977.

4. The applicant, Robert Liotto, was present at the formal hearing but did not testify. No evidence was introduced to deny his receipt of the Notice of Determination No. 2555 dated March 20, 1974.

5. No evidence was adduced to show that applicant, Robert Liotto, had made any written communication with the Miscellaneous Tax Bureau prior to his attorney's letter dated October 10, 1974.

6. The attorney for the Miscellaneous Tax Bureau pointed out that, even considering the attorney's letter of October 10, 1974 as an application for a hearing, more than ninety days had elapsed prior to that date after the mailing of a Notice of Determination dated March 20, 1974.

CONCLUSIONS OF LAW

A. That section 478 of Article 20 of the Tax Law limits to ninety days the time within which a person may apply to the State Tax Commission for a hearing, after the giving of notice of a determination to the person against whom the tax is assessed. Here more than six months elapsed between the assessment and the attempt by applicant, Robert Liotto, to seek a conference.

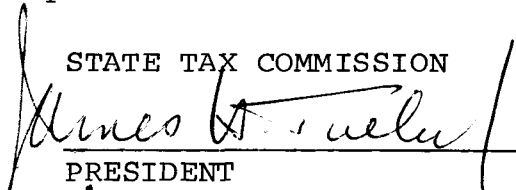
B. That the application for redetermination of Assessment No. 2555 by applicant, Robert Liotto, was time barred.

C. That having reached the conclusion that the application of Robert Liotto was barred, there is no need to consider the matter further. The application is in all respects denied.

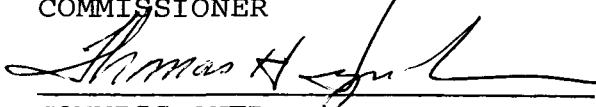
DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER