

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GASPARE MANGIARACINA

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 (a) 20 of the
Tax Law for the Year (a) or Period (a) 1974.

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 29 day of September, 19 77, she served the within

Notice of Decision by (~~certified~~) mail upon Gaspare Mangiaracina

(~~representative of~~) the petitioner in the within proceeding,

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

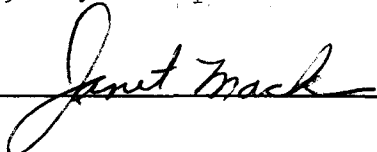
as follows: Gaspare Mangiaracina
74-16 85th Drive
Woodhaven, New York 11421

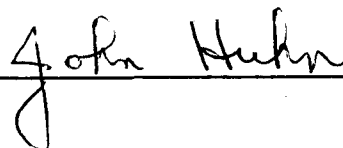
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

29 day of September, 1977.







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

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

September 29, 1977

Gaspere Mangiaracina
74-16 85th Drive
Woodhaven, New York 11421

Dear Mr. Mangiaracina:

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(x) **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 of Tax Appeals Bureau

cc: ~~XXXXXXXXXXXXXXXXXXXX~~ Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
GASPARE MANGIARACINA	:	DECISION
	:	
for a Hearing under Article 20 of the	:	
Tax Law for the Year 1974.	:	

Applicant, Gaspare Mangiaracina, 74-16 85th Drive, Woodhaven, New York 11421, filed an application for revision of a determination or for refund of cigarette taxes under Article 20 of the Tax Law for the year 1974. (File No. 15227).

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 1:15 P.M. The petitioner appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On June 4, 1976, 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 the applicant, Gaspare Mangiaracina, for 46 cartons of cigarettes subject to penalty, which cartons were allegedly seized on December 8, 1975. A penalty of \$5.00 per carton was assessed against applicant, Gaspare Mangiaracina, for a total penalty due of \$230.00.

2. On June 11, 1976, an attorney sent a letter to the Miscellaneous Tax Bureau requesting a hearing for the purpose of reviewing the determination against the applicant, Gaspare Mangiaracina.

3. On May 13, 1977, a Notice of Formal Hearing was sent to the applicant, Gaspare Mangiaracina (with a copy to the attorney who had requested the hearing) scheduling a hearing at the offices of the State Tax Commission in New York City on June 23, 1977.

4. The applicant, Gaspare Mangiaracina, appeared at the formal hearing without his attorney. He stated that he had discussed the matter with his attorney who was otherwise engaged, and that he wished to proceed without the said attorney present. Applicant expressed a desire to explain his position and to testify at the hearing.

5. According to a certified copy of the court records of the Criminal Court of the City of New York, County of Queens, applicant, Gaspare Mangiaracina, was arrested on December 8, 1975 and charged with a violation of section 481-b of Article 20 of the Tax Law, in that he was found in possession of 56 cartons of cigarettes found not to have the New York State Tax Stamp affixed thereto. A plea of "Guilty" was entered by applicant on February 27, 1976 to a reduced charge of a violation of section 240.20 of the Penal Law, "Disorderly Conduct". Applicant was fined the sum of \$100.00 with an alternative of 10 days in jail. He paid the fine on March 29, 1976.

6. Applicant, Gaspare Mangiaracina, testified to the accuracy of the facts stated in the court papers. He admitted that he had purchased unstamped cigarettes and that these cigarettes had been found by the arresting officer in the trunk of applicant's auto, which he was driving.

CONCLUSIONS OF LAW

A. That by his own admission in court and at the hearing, applicant, Gaspare Mangiaracina, was in possession of unstamped cigarettes on December 8, 1975 in a clear violation of Article 20 of the Tax Law.

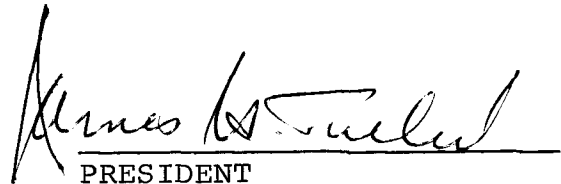
B. That the penalty imposed pursuant to section 481 of the Tax Law was reasonable and proper.

C. That the application of Gaspare Mangiaracina for re-determination of an assessment of cigarette tax due is in all respects denied, and that Determination No. 3042 dated June 4, 1976 is sustained.


DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER