

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH MANLEY

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 (s) 1976.

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, 1977, she served the within

Notice of Decision by ~~(certified)~~ mail upon Joseph Manley

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

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

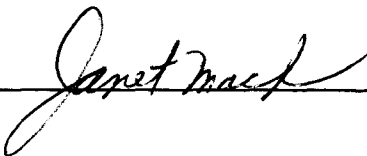
as follows: Joseph Manley  
62 Clifton Avenue  
Staten Island, New York

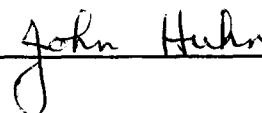
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative~~  
~~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

In the Matter of the Petition

of

JOSEPH MANLEY

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 (x) 20 of the  
Tax Law for the Year (s) or Period (s) 1976.

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, 1977, she served the within

Notice of Decision by (~~certified~~) mail upon Jerome S. Birch, Esq.

(representative of) the petitioner in the within proceeding,

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

as follows: Jerome Birch, Esq.

1749 Victory Boulevard

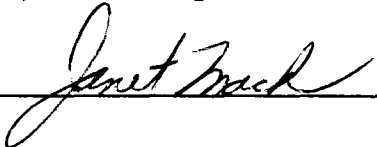
Staten Island, New York 10314

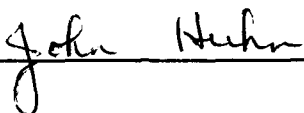
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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

Joseph Manley  
62 Clifton Avenue  
Staten Island, New York

Dear Mr. Manley:

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 of the 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 :  
JOSEPH MANLEY : DECISION  
for a Hearing under Article 20 of the :  
Tax Law for the Year 1976. :

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Applicant, Joseph Manley, 62 Clifton Avenue, Staten Island, New York applied for revision of a determination or for refund of cigarette tax under Article 20 of the Tax Law for the year 1976 (File No. 16281).

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 21, 1977 at 1:15 P.M. The petitioner appeared by Jerome S. Birch, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

#### ISSUE

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

#### FINDINGS OF FACT

1. On June 28, 1976, the Miscellaneous Tax Bureau mailed applicant, Joseph Manley, a Notice of Determination of Tax Due under Cigarette Tax Law, Article 20, Section 481-6, and an assessment of tax and penalty totalling \$387.00.

2. On July 8, 1976, an attorney for applicant, Joseph Manley, addressed a letter to the Miscellaneous Tax Bureau requesting a hearing on Determination No. 3059 which was dated June 28, 1976.

3. On May 13, 1977, a Notice of Formal Hearing was sent to applicant, Joseph Manley (and a copy to his attorney), scheduling a hearing at the offices of the State Tax Commission in New York City.

4. At the formal hearing, a certificate of disposition from the Criminal Court of the City of New York, Richmond County, indicated that applicant, Joseph Manley, was arrested on March 6, 1976 on a charge of a violation of section 481 of the Tax Law. It also indicated that he had pleaded "Guilty" to possession of untaxed cigarettes as a misdemeanor under section 481(a)(2) of Article 20 of the Tax Law. He was sentenced to a fine of \$50.00 or 10 days in jail and he indeed paid the fine on March 12, 1976.

5. Applicant, Joseph Manley, appeared at the formal hearing on June 21, 1977 and admitted that the facts indicated on the certificate of disposition were accurate. He stated that he wanted time to pay the tax and penalty assessed.

CONCLUSIONS OF LAW

A. That by his own admission at the hearing, applicant, Joseph Manley, was in possession of unstamped cigarettes on March 6, 1976 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.

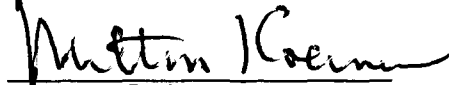
C. That the application of Joseph Manley for redetermination of an assessment of cigarette tax due is in all respects denied, and that Determination No. 3059 dated June 4, 1976 is sustained.

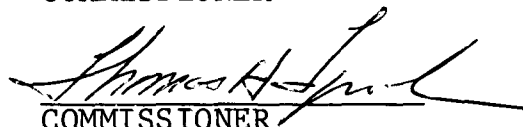
DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER