

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GASPAR J. QUARANTA

AFFIDAVIT OF MAILING

~~For a Redetermination of a Deficiency or~~
~~a Revision of a Determination of a Refund~~
ask for a Hearing
under Article (x) 20 of the
Tax Law for the year(s) or Period(s)

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 27th day of July, 1977, she served the within
Notice of Short Form Order by ~~(certified)~~ mail upon Gaspar J. Quaranta

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

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

Mr. Gaspar J. Quaranta
22 Tarkington Road
Holbrook, New York 11741

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

27th day of July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GASPAR J. QUARANTA

AFFIDAVIT OF MAILING

~~For the Refund of the Tax Deficiency or~~
~~Revision of the Determination or Refund~~
for a Hearing
under Article (x) 20 of the
Tax Law, for the (x) (s) Period(s)

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 27th day of July, 1977, she served the within Notice of Short Form Order by (certified) mail upon Harold Sussman (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harold Sussman, Esq.
200 Garden City Plaza
Garden City, New York 11530

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

27th day of July, 19 77

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 27, 1977

**Mr. Gaspar J. Quaranta
22 Tarkington Road
Holbrook, New York 11741**

Dear Mr. Quaranta:

Please take notice of the SHORT FORM ORDER of the State

Tax Commission enclosed herewith.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul B. Coburn", written over a horizontal line.

**Paul B. Coburn
Supervising Tax
Hearing Officer**

Enclosure

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
GASPAR J. QUARANTA	:	SHORT FORM
for a Hearing Under Article 20 of the	:	ORDER
Tax Law.	:	

WHEREAS, a formal hearing was held in the above entitled matter on December 8, 1976 before Julius E. Braun, Hearing Officer, and

WHEREAS, Julius E. Braun, Hearing Officer, on January 14, 1977 submitted his proposed recommendation to the State Tax Commission together with a transcript of the hearing and the exhibits introduced into evidence at the hearing, and

WHEREAS, the State Tax Commission has reviewed said record and has decided that additional testimony should be taken, including testimony by a representative of this Department's Special Investigations Bureau concerning any facts and circumstances which support the issuance of the Notice of Determination of Tax Due under Cigarette Tax Law, dated June 9, 1971 (Department's Exhibit A), which is at issue in this proceeding;

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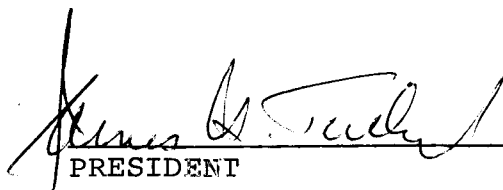
NOW THEREFORE it is ordered that the hearing be reopened and a further hearing be held on the 24th day of August 1977 at 9:15 A.M.

SO ORDERED.

DATED: Albany, New York

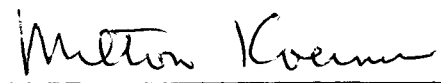
STATE TAX COMMISSION

July 27, 1977



PRESIDENT

Commissioner Thomas H. Lynch dissents (dissenting opinion attached)



COMMISSIONER

COMMISSIONER

GASPAR J. QUARANTA

Commissioner Thomas H. Lynch, dissenting

The proposed recommendations submitted by Julius E. Braun, Hearing Officer, were correct. There is no proof that Gaspar J. Quaranta was in possession of untaxed cigarettes.

It appears from the record that an assessment was issued by the Tax Bureau due to the fact "Mr. Quarenta was arrested on a charge of violating Article 20, section 481-2 of the New York State Tax Law" (Record 7) and that the applicant "pleaded guilty to the charge stated in the assessment" (Record 9). After much dialogue between attorneys, it developed that the applicant pleaded guilty to a charge of loitering, and not possession of untaxed cigarettes. The confusion was due to the fact that the Court's docket book noted that the applicant had pleaded guilty; the archives showed that the guilty plea was to a loitering charge.

Once the certificate of disposition was admitted into evidence, the attorney for the applicant requested that the assessment be "vacated, or whatever the term is" (Record 20). At this point, the attorney for the Tax Bureau requested an adjournment to bring in "a witness from the Cigarette Bureau" (Record 20).

After a short recess, the attorney for the Tax Bureau stated at page 21 of the Record:

"I spoke to Mr. Urzi, Supervisor of the Cigarette Tax Bureau. Mr. Urzi has refused to have the man come in to testify on this particular case.

In view of the fact that counsel for the applicant indicated that the plea of guilty entered by the taxpayer was for loitering and did not involve cigarettes, I have no further questions for the taxpayer."

The Hearing Officer then inquired "Does the Cigarette Tax Department withdraw its assessment?" At which the attorney for the State responded "This is not what I said." At this point the attorney for the State was asked if he had anything further to offer and he replied in the negative (Record 22). The hearing was then closed by the Hearing Officer at 11:45 a.m.

I find that the hearing was fairly conducted with both sides given the opportunity to present evidence. A recess was granted the Tax Bureau to allow it to produce their witness. The Tax Bureau refused to produce the witness and further did not make a request that additional time be granted. No further questions were asked of the witness and no request for a continuance or postponement was made.

To now allow the Tax Bureau, which was represented by counsel, to produce a witness it first refused to produce is arbitrary, capricious and denies the applicant the benefit of a fair hearing.


Commissioner

July 27, 1977