

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TEDDY'S CIGARETTE SERVICE, INC.

AFFIDAVIT OF MAILING

For a ~~Refund Application of a Deficiency~~ :
~~Review of a Refund Application or Refund~~ :
~~XX~~ Hearing :
~~Taxes~~ under Article(s) 20 of the :
Tax Law for the Year(s) or Period(s).

State of New York
County of Albany

Bruce Batchelor , 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 9th day of February , 1977, ~~she~~ served the within
 Notice of Decision by ~~(certified)~~ mail upon Teddy's Cigarette
 Service, Inc. ~~(representative of)~~ the petitioner in the within proceeding,
 by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
 as follows: Teddy's Cigarette Service, Inc.
 416 Turner Avenue
 Bronx, NY

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

9th day of February , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TEDDY'S CIGARETTE SERVICE, INC. :

AFFIDAVIT OF MAILING

For a ~~Redemption of a Refund~~ :
~~Revision of a Determination of a Refund~~ :
 of Hearing :
~~under Article (a) 20~~ of the :
 Tax Law ~~for the year 2000~~ Period(s).

State of New York
County of Albany

Bruce Batchelor , 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 9th day of February , 1977, he served the within
 Notice of Decision by ~~certified~~ mail upon John A. Adamo, Esq.

(representative of) the petitioner in the within proceeding,

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

as follows: John A. Adamo, Esq.
277 Broadway
New York, NY 10007

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

9th day of February , 1977.

Bruce Batches

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

February 9, 1977

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

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Teddy's Cigarette Service, Inc.
416 Turner Avenue
Bronx, NY

Gentlemen:

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

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

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
TEDDY'S CIGARETTE SERVICE, INC. : DECISION
for a hearing under Article 20 of the Tax :
Law. :

Applicant, Teddy's Cigarette Service, Inc., 416 Turner Avenue, Bronx, New York, applied for a hearing regarding the seizure, the taking possession of and the forfeiture to New York State of one hundred packs of cigarettes and eight cigarette vending machines, and the redemption of said cigarettes and cigarette vending machines. (File No. 14930).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1976, at 3:15 p.m. Applicant appeared by John A. Adamo, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the applicant, Teddy's Cigarette Service, Inc., should be permitted to redeem the illegally stamped cigarettes and cigarette vending machines seized by the State Tax

Commission and declared forfeited, pursuant to section 477(b) of the Tax Law.

FINDINGS OF FACT

1. Applicant, Teddy's cigarette Service, Inc., located at 416 Turner Avenue, Bronx, New York, owned and operated approximately forty cigarette vending machines at various locations in New York City.

2. On April 22, 1976, all of such cigarette vending machines were seized by agents of the Department of Taxation and Finance and were transported to Two World Trade Center in New York City, where the machines were examined and where it was determined that eight of the forty machines contained a total of one hundred improperly stamped packages of cigarettes.

3. On May 3, 1976, applicant, Teddy's cigarette Service, Inc., was notified that the eight cigarette vending machines and the one hundred packs of improperly stamped cigarettes were declared forfeited.

4. All of applicant's cigarettes are purchased from J & M Tobacco & Candy Corp., and are placed in the cigarette vending machines by the son of Mr. and Mrs. Fina, the only shareholders of the applicant corporation.

5. Applicant's cigarette vending machines had a capacity of 660 packs of cigarettes. At the time of the seizure, the eight machines containing the one hundred improperly stamped packs of cigarettes each contained approximately 350 packs of cigarettes. All forty cigarette vending machines held

approximately 14,000 packages of cigarettes.

6. The improperly stamped cigarette packs consisted almost entirely of "Chesterfield" regular cigarettes, a brand of cigarette which applicant's records indicate is a very poor-selling item. The 1976 invoices of the applicant do not reveal sufficient purchases of "Chesterfield" regular cigarette cartons to even account for the one hundred improperly stamped packs.

7. No improperly stamped cigarettes were found at the office of applicant or on the trucks of applicant.

8. Applicant cooperated fully with departmental personnel in the conduct of their investigation.

CONCLUSIONS OF LAW

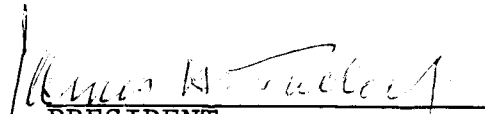
A. That the failure of applicant to pay the tax or to affix tax stamps on the one hundred packs of seized cigarettes was the result of error or ignorance of the fact, and was not the result of an intent to evade payment of the applicable New York cigarette tax.

B. That the application of Teddy's Cigarette Service, Inc., is granted to the extent that the applicant will be permitted to redeem the eight cigarette vending machines and the one hundred packs of cigarettes seized on April 22, 1976 and forfeited on May 3, 1976, provided that within 30 days after the service of a copy of this decision upon counsel for the applicant at his office, 277 Broadway, New York, New York 10007, by mail or otherwise, the applicant makes payment of

the tax due on the one hundred packs of cigarettes, together with
a penalty of fifty per centum thereof.

DATED: Albany, New York
February 9, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER