

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

UNITED PARCEL SERVICE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Cigarette :
Taxes under Article(s) 20 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1974

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 7th day of June, 1977, he served the within

Notice of Decision by ~~(certified)~~ mail upon United Parcel Service

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

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

as follows: United Parcel Service
643 West 43rd Street
New York, 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~~ 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

7th day of June, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
UNITED PARCEL SERVICE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Cigarette :
Taxes under Article (x) 20 of the :
Tax Law for the Year (~~XXXX Period~~) :
1974

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 7th day of June, 1977, he served the within

Notice of Decision by (~~certified~~) mail upon Schnader, Harrison, Segal &
Lewis, Esqs. (~~Esq.~~ of Ralph Snyder, (representative of) the petitioner in the within proceeding,
Counsel)
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Schnader, Harrison, Segal & Lewis, Esqs.
1719 Packard Building
Philadelphia, Pennsylvania 19102

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

7th day of June, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

June 7, 1977

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

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

United Parcel Service
643 West 43rd Street
New York, New York

Gentlemen:

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

Please take further notice that pursuant to
Section ~~(a)~~ **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	:	
UNITED PARCEL SERVICE	:	DECISION
for Revision or for Refund of Cigarette	:	
Taxes under Article 20 of the Tax Law	:	
for the Year 1974.	:	

Petitioner, United Parcel Service (hereinafter UPS), 643 West 43rd Street, New York, New York, applied for revision of a determination or for refund of Cigarette Taxes under Article 20 of the Tax Law for the year 1974. (File No. 10565).

A formal hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York on March 29, 1976 before Edward L. Johnson, Hearing Officer. The petitioner appeared by Schnader, Harrison, Segal & Lewis, Esqs. (Ralph Snyder, Esq. of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of counsel).

ISSUE

Whether a common carrier is liable for cigarette taxes on cigarettes stolen from it in New York State when the cigarettes were placed with the carrier by the manufacturer for delivery to a United States military exchange consignee in New York State.

FINDINGS OF FACT

1. Petitioner, UPS, did not file Cigarette Tax returns for the tax year 1974.

2. Petitioner, UPS, was licensed to operate as a common carrier in the State of New York.

3. Following a desk audit, the Miscellaneous Tax Bureau issued a Notice of Determination of tax due under Article 20 of the Tax Law against petitioner, UPS. The Notice, dated October 11, 1974, found taxes due and unpaid according to New York State Cigarette Tax, 10 day Notices #943 and 944 for \$90.00 each for one case of cigarettes lost while in the possession of petitioner, UPS.

4. A claim for loss of two cases of cigarettes had been made by the manufacturer, Brown & Williamson Tobacco Corp. and petitioner, UPS, had paid the claimant \$100.00 each for the lost cases of cigarettes.

5. Possession of the cigarettes had been given to petitioner, UPS, by Brown & Williamson at the latter's warehouse in Syracuse, New York for delivery to Hancock Field Exchange at the U.S. Air Force Base in North Syracuse, New York.

6. No cigarette taxes had been paid to New York State on the cigarettes before they were lost.

7. Hancock Field Exchange was a place for the sale of goods pursuant to regulations promulgated by the U.S. Air Force and operated by a voluntary unincorporated organization of the armed forces of the United States.

8. That cigarettes sold to Hancock Field Exchange were not subject to tax at the facility. Tax Law section 471 Subdivision 1; opinion of the Attorney General - Legislative Document - 1939 Annual Report 204 June 30, 1939.

CONCLUSIONS OF LAW

A. That Article 20 of the Tax Law sets out the precise meaning of the term "sale" to mean "...any transfer of title or possession or both." Tax Law Section 470 Subdivision 3.

Physical custody was given the petitioner by the shipper, albeit for a limited purpose, and under the peculiar definition in Article 20, this constitutes "sale." There was a transfer of possession.

B. That Section 471 of the Tax Law clearly provides that the incidence of tax is upon possession of cigarettes within the State. Though a bailee for hire, petitioner UPS had actual possession of the cigarettes in question from the time it received them at the shipper's warehouse in Syracuse, New York until those cigarettes were lost, presumably enroute to the consignee in North Syracuse, New York.

C. That the cigarettes in question had come to rest in Brown & Williamson's warehouse. They were in New York State intra-state commerce when lost.

D. That petitioner, UPS, relied in good faith upon legal advice that UPS did not owe any cigarette tax. Its delay in making payment of the tax assessed is excusable within the meaning

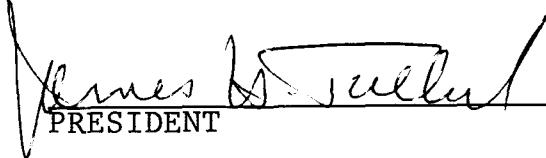
of the Tax Law, section 481 subdivision 1(a). The penalty was not assessed on Determination No. 2711 dated October 11, 1974.

E. That petition for redetermination of the Cigarette Tax on Determination No. 2711 dated October 11, 1974 is in all respects denied.

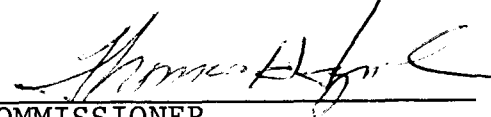
DATED: Albany, New York

June 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER