

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THEODORE WAGNER

For ~~the determination of the tax liability of~~
a Revision ~~of a determination~~ or a Refund
of Cigarette
Taxes under Article (x) 20 of the
Tax Law ~~for the year(s) or period(s)~~

AFFIDAVIT OF MAILING

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 30th day of June, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Theodore Wagner

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Theodore Wagner
325 East 21st Street, Apt. 24
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)~~
~~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

30th day of June, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 30, 1977

TELEPHONE: (518) 457-1723

Mr. Theodore Wagner
325 East 21st Street, Apt. 24
New York, New York

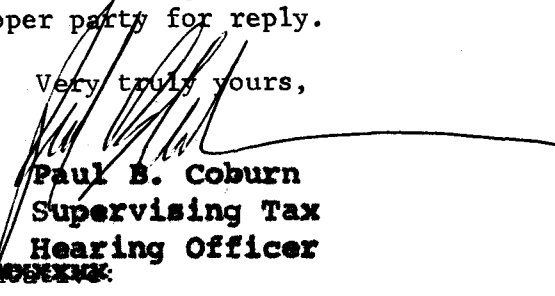
Dear Mr. Wagner:

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

Please take further notice that pursuant to
Section(§) **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: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application
of
THEODORE WAGNER
for Revision or Refund of Cigarette Taxes
Under Article 20 of the Tax Law

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:
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DETERMINATION

The applicant, Theodore Wagner, of 325 East 21st Street, Apartment 24, New York, New York, filed an application for revision or refund of cigarette taxes under Article 20 of the Tax Law. (File No. 14564).

A formal hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Julius Braun, Hearing Officer on February 17, 1977, at 9:15 a.m. The applicant 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. The applicant, Theodore Wagner, was never granted a wholesale dealer's license to sell cigarettes.

2. On January 21, 1974, the Miscellaneous Tax Bureau issued penalty assessment against the applicant for unlawful possession on December 7, 1973 of unstamped cigarettes, imposing a penalty of \$10.00 per carton on 739 cartons of unstamped cigarettes subject to penalty in the amount of \$7,390.00.

3. On December 7, 1973, at 325 East 21st Street, New York, New York, the applicant, Theodore Wagner, did unlawfully have in his possession and under his control 749 cartons of cigarettes which were unstamped in violation of section 472 of the Tax Law.

4. The applicant was convicted in Criminal Court for unlawful possession of unstamped cigarettes.

CONCLUSIONS OF LAW

A. That on December 7, 1973, the applicant, Theodore Wagner, did unlawfully have in his possession 749 cartons of unstamped cigarettes in 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 for revision of the penalty be and the same is hereby denied.

DATED: Albany, New York
June 30, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER