

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Charles Buccafusco :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Cigarette Tax :
under Article 20 of the Tax Law
for the Year 1977. :

State of New York
County of Albany

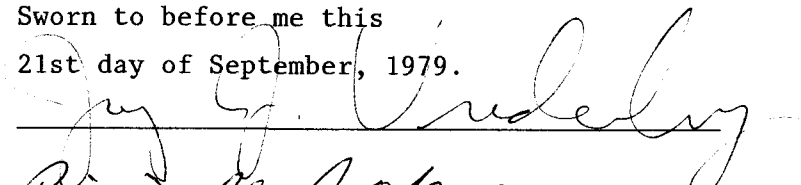

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Decision by mail upon Charles Buccafusco, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles Buccafusco
1094 E. 4th St.
Brooklyn, NY 11230

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
21st day of September, 1979.

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

Charles Buccafusco
1094 E. 4th St.
Brooklyn, NY 11230

Dear Mr. Buccafusco:

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,



cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CHARLES BUCCAFUSCO	:	DECISION
for a Hearing to Review a Determination	:	
under Article 20 of the Tax Law for	:	
the Year 1977	:	

Applicant, Charles Buccafusco, 1094 East 4th Street, Brooklyn, New York 11230, filed a petition for a hearing to review a determination under Article 20 of the Tax Law for the year 1977 (File No. 20219).

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 June 20, 1978 at 10:45 A.M. and continued on July 21, 1978 at 9:00 A.M. Applicant appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Barry Bresler, Esq., of counsel).

ISSUE

Whether applicant possessed or controlled packages of cigarettes which bore no New York cigarette tax stamps and, therefore, is subject to a penalty imposed pursuant to section 481.1(b) of the Tax Law.

FINDINGS OF FACT

1. On September 1, 1978, the Miscellaneous Tax Bureau issued a Notice of Deficiency of Tax Due under the Cigarette Tax Law for a penalty of \$981.00. This was based on the seizure of 227 cartons of cigarettes not bearing New York tax stamps subject to penalty.

2. Pursuant to an anonymous phone call that a white male was selling untaxed cigarettes in the vicinity of 1094 East 4th Street, Brooklyn, New York, Mr. Joseph J. Higgins went to the address. Mr. Higgins is an investigator employed by the New York State Department of Taxation and Finance.

3. At 3:00 P.M. on July 25, 1977, Mr. Higgins observed applicant, Charles Buccafusco, depart from the premises in a black Volkswagen. Petitioner parked the car a few blocks away and a woman left the car holding a clear plastic shopping bag. Mr. Higgins was able to observe three cartons of cigarettes in the bag.

4. Mr. Higgins approached the car, displayed his badge and identified himself as a peace officer. At this time, he observed 36 additional cartons of cigarettes on the rear seat of the car. He examined a number of the cartons and observed only North Carolina tax stamps on the packages.

5. Mr. Higgins arrested petitioner and the woman. Mr. Buccafusco then led Mr. Higgins to his home, the 1094 East 4th Street address. He led Mr. Higgins to the basement and to the location of 198 cartons of cigarettes. None of the packages of cigarettes had New York tax stamps.

6. Petitioner was taken to Central Booking at Gold Street in Brooklyn and charged with possession of cigarettes not having New York tax stamps under section 481.2 of the Tax Law. Petitioner subsequently plead guilty to the reduced charge of disorderly conduct under section 240.20 of the Penal Law. He was fined \$50.00.

7. The cigarettes seized by Mr. Higgins were transported to his office's vault. A receipt from the property clerk was issued.

CONCLUSIONS OF LAW

A. That on July 25, 1977, Charles Buccafusco possessed or had control over 227 cartons of cigarettes without New York cigarette tax stamps, in violation of Article 20 of the Tax Law.

B. That under section 481.1(b) of the Tax Law, the Tax Commission may impose a penalty of not more than one hundred dollars for each two hundred cigarettes or fraction thereof in excess of two thousand cigarettes in packages not stamped with New York cigarette tax stamps, in the possession or under the control of applicant. The penalty is determined by the Commission to be \$981.00.

C. That the application of Charles Buccafusco is denied and the Notice of Determination is sustained.

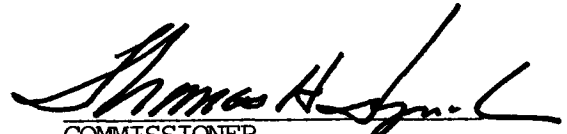
DATED: Albany, New York

STATE TAX COMMISSION

SEP 21 1979

PRESIDENT


COMMISSIONER


COMMISSIONER