

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN CASTAGNA

AFFIDAVIT OF MAILING

For a ~~Redetermination of a Deficiency~~  
~~or a Refund of a Deficiency~~  
~~or a Hearing to Review a Determination~~  
~~of Taxes~~ under Article (x) 20 of the  
Tax Law for the Year (x) ~~Period(s)~~ 1974.:


State of New York  
County of Albany

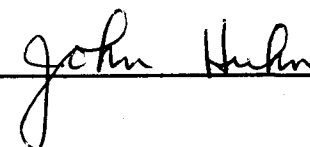
John Huhn , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 6th day of October , 19 78, he served the within  
Notice of Decision by ~~certified~~ mail upon John Castagna  
~~(Representative of the)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: John Castagna  
2126 East 26th Street  
Brooklyn, 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)~~  
~~XXXXXX~~ 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

6th day of October , 1978





## TA-3 (2/76)



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

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

October 6, 1978

**John Castagna  
2126 East 26th Street  
Brooklyn, New York**

**Dear Mr. Castagna:**

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,

**Michael Alexander  
Supervising Tax Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
JOHN CASTAGNA : DECISION  
for a Hearing to Review a Determination :  
under Article 20 of the Tax Law for the :  
Year 1974. :  
:

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Applicant, John Castagna, 2126 East 26th Street, Brooklyn, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1974 (File No. 13515).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 12, 1976 at 3:00 P.M. and continued on June 20, 1977 at 2:45 P.M. Applicant appeared by Gilbert M. Goldman, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

#### ISSUE

Whether the application for redetermination of the cigarette tax penalty imposed against applicant had been timely filed.

#### FINDINGS OF FACT

1. On June 10, 1974, the Miscellaneous Tax Bureau mailed a Notice of Determination of Tax Due (No. 2608) under section 481.1(b)

of Article 20 of the Tax Law, against applicant, John Castagna, and another party for 2,275 cartons of unstamped cigarettes subject to penalty, which cartons were allegedly seized on May 10, 1974. A penalty of \$10.00 per carton was imposed against applicant, John Castagna, for a total penalty of \$22,750.00.

2. On January 10, 1975, an attorney allegedly representing applicant, John Castagna, sent a letter to the Miscellaneous Tax Bureau protesting the Notice issued against applicant and requesting a hearing on same.

3. Applicant, John Castagna, appeared at the hearing and testified that he had not sought a hearing on the penalty, prior to the letter sent in his behalf by an attorney on January 10, 1975.

CONCLUSIONS OF LAW

A. That the application of John Castagna for a hearing to review a determination under Article 20 of the Tax Law, was required to be filed by him within 90 days thereafter, in accordance with section 478 of the Tax Law; that the filing of said application was not timely.

B. That the application for redetermination of the penalty assessed under the New York State Cigarette Tax Law is in all respects denied and that Notice No. 2608 issued on June 10, 1974 is sustained.

DATED: Albany, New York  
October 6, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER