

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ROBERT DE CARLO

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) ~~XXXXXX~~ :  
1975.

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that

Xshe is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 23rd day of February , 19 79, Xshe served the within

Notice of Decision by ~~XXXXXX~~ mail upon Robert De Carlo

~~XXXXXX~~ the petitioner in the within proceeding,

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

Robert De Carlo  
150-68 15th Drive  
Whitestone, NY 11357

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

Sworn to before me this

23rd day of February , 19 79

Marilyn J. Papneiu

John Huhn



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

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

**February 23, 1979**

**Robert De Carlo  
150-68 15th Drive  
Whitestone, NY 11357**

**Dear Mr. De Carlo:**

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  
Supervisor Foraal Hearing Unit**

cc: ~~XXXXXXXXXXXXXXXXXXXX~~  
Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

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 February 16, 1978 at 2:00 P.M. Applicant appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

## ISSUE

Whether the penalty of \$4.00 per carton imposed pursuant to section 481.1(b) of the Tax Law on applicant for possession of or control over unstamped cigarettes was proper.

## FINDINGS OF FACT

1. The Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due Under Cigarette Tax Law to applicant, Robert DeCarlo, asserting a penalty of \$4.00 per carton for a total of \$1,408.00, based on a March 10, 1975 seizure of 352 cartons of unstamped cigarettes. Said Notice was mailed to "Robert DeCarlo, 150-68 15 Ave., Whitestone, N.Y." and was returned to the Bureau by the United States Postal Service with the stamp "No Such Number".

2. Applicant, Robert DeCarlo, resides at 150-68 15th Drive, not Avenue (underlining for emphasis).

3. A subsequent Notice was timely issued on February 28, 1978 to Robert DeCarlo in the same amount as the notice in Finding of Fact "1", above.

4. Applicant, Robert DeCarlo, carried 362 cartons of unstamped cigarettes into the basement of his residence and stored them there for another person. He did not know that the cigarettes did not have New York State cigarette tax stamps. The person for whom he was holding the cigarettes has departed the country.

5. On March 10, 1975, an investigator approached applicant in front of his house and showed him a search warrant for the search of the premises regarding cigarettes. Applicant complied with the investigator, F. Mooney, and took him into the basement and showed the investigator the cartons of cigarettes.

6. The cartons of cigarettes were counted in front of applicant and then placed in the investigator's car. A receipt by the Property Clerk for cigarettes was issued that day.

7. Applicant was then arrested and taken to the 122nd Precinct police station where applicant was "booked" and released in his own recognizance. Subsequently, applicant pleaded guilty to a misdemeanor and was fined \$750.00 for possession of the unstamped cigarettes.

8. Applicant had never been involved in any previous incident involving unstamped cigarettes. Furthermore, it was through applicant's initiative and desire to pay whatever penalty was due New York State on his possession of or control over the unstamped cigarettes that this matter came before the State Tax Commission.

CONCLUSIONS OF LAW

A. That applicant, Robert DeCarlo, was in possession or had under his control 362 cartons of unstamped cigarettes on March 10, 1975.

B. That pursuant to section 481.1(b) of the Tax Law, the State Tax Commission may impose a penalty of not more than \$100.00 for each 200 cigarettes in unstamped packages in excess of 2,000 such cigarettes in the possession or under the control of any person.

C. That the State Tax Commission, in its discretion, may remit all or part of the penalty imposed by section 481.1(b) of the Tax Law.

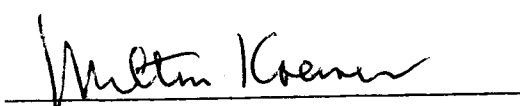
D. That based on applicant's lack of knowledge and his open cooperation, and in light of the fact that this is his first involvement in such a matter and that said involvement was not as a principal in the trafficking of unstamped cigarettes, the Commission determines that the penalty shall be reduced to two dollars per carton for a total penalty of \$704.00.


E. That except as provided in Conclusion of Law "D" above, the application of Robert DeCarlo is denied and the Notice of Determination of Tax Due dated February 22, 1978 is sustained.

DATED: Albany, New York  
February 23, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER