

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SEBASTIAN DePERGOLA

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 ~~(x)~~ ~~1973~~ 1973. :

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 14th day of February , 1979 , he served the within  
Notice of Decision by ~~(certified)~~ mail upon Sebastian DePergola

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

Sebastian DePergola  
1979 Schenectady Avenue  
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~~) 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

14th day of February , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SEBASTIAN DePERGOLA

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)~~ ~~xxxPermitted(s)~~ 1973. :

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 14th day of February , 19 79, he served the within  
Notice of Decision by ~~(certified)~~ mail upon Bruce Davis, Esq.

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

Bruce Davis, Esq.  
1488 Flatbush Avenue  
Brooklyn, NY 11210

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

14th day of February , 1979.

Marilyn J. Papineau

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 14, 1979

Sebastian DePergola  
1979 Schenectady Avenue  
Brooklyn, New York

Dear Mr. DePergola:

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	:	
SEBASTIAN DePERGOLA	:	DECISION
for a Hearing to Review a Determination under	:	
Article 20 of the Tax Law for the Year 1973	:	

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Applicant, Sebastian DePergola, 1979 Schenectady Avenue, Brooklyn, New York, filed an application (through an attorney) for a hearing to review a determination under Article 20 of the Tax Law for the year 1973 (File No. 14864).

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 February 16, 1978 at 2:45 P.M. Applicant appeared by Norman Greenberg, Esq. (Bruce Davis, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

#### ISSUE

Whether the penalty of \$1,497.00 imposed against applicant for unlawful possession of unstamped cigarettes was proper.

FINDINGS OF FACT

1. On August 7, 1973, applicant was arrested by agents of the Special Investigations Bureau of the Department of Taxation and Finance, who were joined by New York City police officers. Applicant was charged with possession of 509 cartons of cigarettes which had no New York State tax stamps.

2. In July or August of 1975, applicant, Sebastian DePergola, pleaded guilty to the misdemeanor of possession of 100 cartons of cigarettes bearing no tax stamps. He was fined \$100.00 or thirty days.

3. At the formal hearing, applicant, Sebastian DePergola, testified that he had purchased and had in his control 509 cartons of unstamped cigarettes on August 7, 1973.

4. The Miscellaneous Tax Bureau assessed applicant, Sebastian DePergola, a penalty of \$3.00 per carton for 499 cartons of cigarettes, for a total assessment of \$1,497.00 on Determination No. 2936.

CONCLUSIONS OF LAW

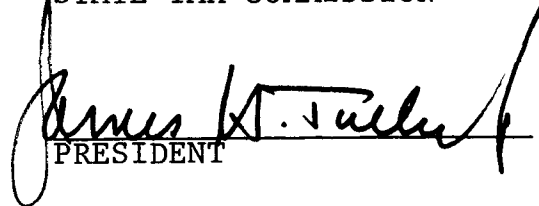
A. That possession of more than ten cartons of cigarettes which bear no New York State tax stamp is subject to a penalty under section 481-b of the Tax Law.

B. That the penalty assessed against applicant, Sebastian DePergola, was proper and is sustained.

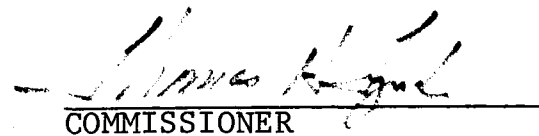
C. That the application of Sebastian DePergola for redetermination is in all respects denied.

DATED: Albany, New York  
February 14, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER