

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Josephine Dragotta :

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 1973. :

State of New York

County of Albany

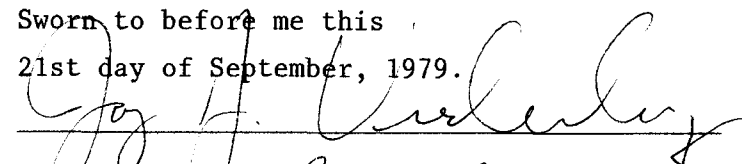

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Decision by mail upon Eugene Mastropieri the representative of the petitioner in the within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

Mr. Eugene Mastropieri
67-40 Myrtle Ave.
Glendale, NY 11227

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
21st day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Josephine Dragotta :

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 1973. :

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 Josephine Dragotta, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Josephine Dragotta

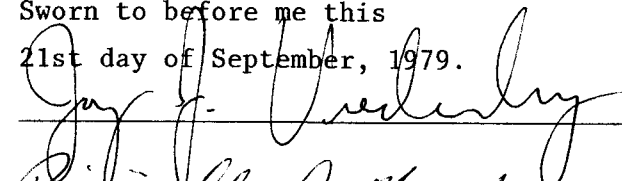
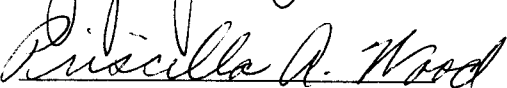
60-56 71st Ave.

Ridgewood, NY 11277

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.



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

Josephine Dragotta
60-56 71st Ave.
Ridgewood, NY 11277

Dear Ms. Dragotta:

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,

A handwritten signature in black ink, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
Eugene Mastropieri
67-40 Myrtle Ave.
Glendale, NY 11227
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
JOSEPHINE DRAGOTTA	:	DECISION
for a Hearing to Review a Determination	:	
under Article 20 of the Tax Law.	:	

Applicant, Josephine Dragotta, 60-56 71st Avenue, Ridgewood, New York 11277, filed an application for a hearing to review a determination under Article 20 of the Tax Law (File No. 10559).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 2, 1976 at 9:15 A.M. Applicant appeared by Eugene Mastropieri, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the penalty of \$13,600.00 imposed on applicant pursuant to section 481.1(b) of the Tax Law, for cigarettes not bearing a New York cigarette tax stamp in the possession or under the control of applicant, should be reduced.

FINDINGS OF FACT

1. On December 19, 1973, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due under the Cigarette Tax Law against applicant, Josephine Dragotta. Said Notice provided that 554 cartons of cigarettes were seized on November 12, 1973, of which 544 cartons were subject to a penalty of \$25.00 per carton for a total penalty of \$13,600.00.

2. Applicant, Josephine Dragotta, was arrested on November 12, 1973 and, pursuant to a proper search, was found to have on her person, in her apartment and in her car, a total of 554 cartons of cigarettes lacking New York tax stamps.

3. Applicant was charged with a Class "A" misdemeanor, in accordance with section 481(2) of the Tax Law. Applicant pleaded guilty to the charge and was fined \$250.00.

4. Applicant's car (in which some of the cigarettes were found, the car having an approximate book value of \$1,500) and 554 cartons of cigarettes were seized.

5. Applicant's activities in violation of Article 20 constitute the only action for which applicant has ever been arrested. Her lack of sophistication in these matters is evidenced by her intention to make 25 cents per carton of cigarettes.

6. Applicant engaged in these unlawful activities out of dire financial need. Her husband had been gravely injured and permanently disabled several years prior thereto, requiring (as a result) very large and continual medical expenses, the full burden of which has been borne by applicant.

7. Applicant received salaries of \$8,264.51 in 1975 and \$7,578.20 in 1974. Her husband has renal disease and is unable to work. In 1975 and 1976, applicant's apartment was burglarized.

CONCLUSIONS OF LAW

A. That applicant, Josephine Dragotta, was in possession of or had under her control 554 cartons of cigarettes on November 12, 1973, and that the packs of cigarettes therein did not bear New York cigarette tax stamps.

B. That pursuant to section 481(b) of the Tax Law, the State Tax Commission may impose a penalty of not more than \$100 for each 200 cigarettes in packages not bearing New York cigarette tax stamps, in excess of 2,000 such cigarettes in the possession or under the control of any person.

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

D. That based on the Findings of Fact above, applicant, Josephine Dragotta, was not a person regularly engaged in the

trafficking of cigarettes not bearing New York tax stamps, which would warrant a penalty to the degree imposed by the Notice of December 19, 1973; therefore, said penalty is reduced to \$1,688.00.

E. That except as provided in Conclusion of Law "D", above, the application of Josephine Dragotta is denied and the Notice of Determination issued December 19, 1973 is sustained.

DATED: Albany, New York

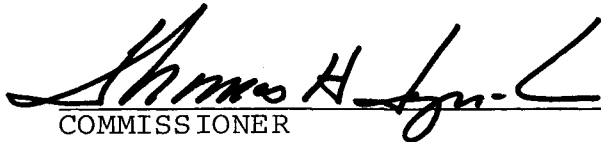
STATE TAX COMMISSION

SEP 21 1979

PRESIDENT



COMMISSIONER



COMMISSIONER