

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ABE KAPLAN

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)~~ ~~or Period(s)~~ 1972. :

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of February , 1979 , ~~she~~ served the within  
Notice of Decision by ~~(certified)~~ mail upon Abe Kaplan

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

Abe Kaplan  
242 Fairbanks Avenue  
Staten Island, 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

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ABE KAPLAN

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) or Period(s)~~ 1972. :

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 Mark T. Constantino, Esq.

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

Mark T. Constantino, Esq.  
58 New Dorp Plaza  
Staten Island, 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.

Marjory J. Papinian

John Huhn



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

February 14, 1979

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

Abe Kaplan  
242 Fairbanks Avenue  
Staten Island, New York

Dear Mr. Kaplan:

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 ~~(a)~~ **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	:	
ABE KAPLAN	:	DECISION
for a Hearing to Review a Determination	:	
under Article 20 of the Tax Law for the	:	
Year 1972.	:	

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Applicant, Abe Kaplan, 242 Fairbanks Avenue, Staten Island, New York, applied for a hearing to review a determination under Article 20 of the Tax Law for the year 1972 (File No. 17565).

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 May 15, 1978 at 1:15 P.M. Applicant appeared by Mark T. Constantino, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

#### ISSUE

Whether the penalty of \$25.00 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, Abe Kaplan,

on December 11, 1972, determining a penalty on the June 24, 1972 seizure of cigarettes totalling 138 cartons. The penalty on 128 cartons thereof at \$25.00 per carton was \$3,200.00.

2. On June 24, 1972, while under surveillance by a police officer, applicant was observed selling fireworks from the trunk of his car on 5th Avenue in Brooklyn, New York.

3. The police officer took applicant's keys and opened the trunk and found therein fireworks, plus a number of cartons and packs of cigarettes which did not bear New York cigarette tax stamps.

4. Applicant was arrested and taken to the 68th Precinct police station, and his car was driven in and the trunk unloaded.

5. Under instructions from the desk officer, the police officer counted the packs of cigarettes and his recollection was that there were "thousands" of packs, but was told by the Police Department's Property Clerk's Office (the day of this hearing) that the amount was 1,380 packs. No receipt by the property clerk was issued, nor was a written notation of the cigarettes counted proffered.

6. No evidence regarding a charge of criminal possession of cigarettes or the disposition of any such charge pursuant to section 481.2 of the Tax Law was proffered. No evidence regarding prior involvement in the trafficking of unstamped cigarettes was proffered.

CONCLUSIONS OF LAW

A. That applicant, Abe Kaplan, was in possession of or had under his control on June 24, 1972, 138 cartons of cigarettes which did not bear New York cigarette tax stamps.

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.

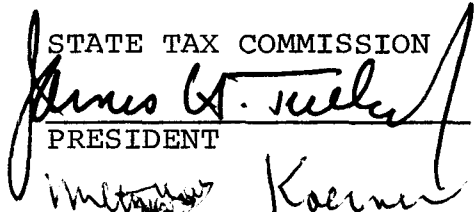
C. That in its discretion, the State Tax Commission may remit all or part of the penalty imposed by section 481.1(b) of the Tax Law.

D. That based on the absence of evidence of other involvement in cigarette trafficking, the Commission determines that the penalty shall be reduced to five dollars per carton for a total of \$640.00.

E. That except as provided in Conclusion of Law "D" above, the application of Abe Kaplan is denied and the Notice of Determination of Tax Due dated December 11, 1972 is sustained.

DATED: Albany, New York  
February 14, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER