

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GASPARE R. MARCHESE

AFFIDAVIT OF MAILING

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

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 3rd day of May, 1978, he served the within  
Notice of Determination by (certified) mail upon Gaspare R. Marchese

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Gaspare R. Marchese  
87-10 149th Avenue  
Howard Beach, Queens, New York

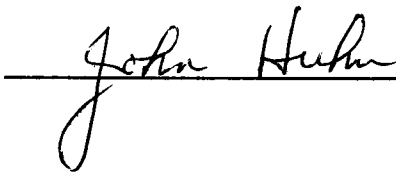
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of  
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

3rd day of May, 1978





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GASPARE R. MARCHESE

AFFIDAVIT OF MAILING

For a ~~Redetermination of a Deficiency~~ :  
~~Revision of a Determination~~ ~~Reform~~ :  
~~Re Hearing to Review a Determination~~ :  
~~Appeal~~ under Article (x) 20 of the :  
Tax Law ~~for the year(s) 1976 to 1978~~ :

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 3rd day of May, 1978, he served the within  
Notice of Determination by ~~(certified)~~ mail upon John J. Nigro


(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: John J. Nigro, Esq.  
394 Old Country Road  
Garden City, New York 11530

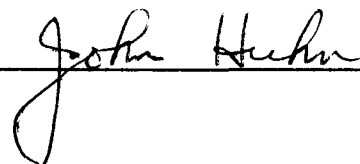
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

3rd day of May, 1978.







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

**May 3, 1978**

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

**Mr. Gaspare R. Marchese**  
**87-10 149th Avenue**  
**Howard Beach, Queens, New York**

**Dear Mr. Marchese:**

Please take notice of the **DETERMINATION**  
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,

**Aloysius J. Mendez**  
**Assistant Director**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
GASPARE R. MARCHESE	:	DETERMINATION
For a Hearing to Review a Determination	:	
under Article 20 of the Tax Law.	:	

---

Applicant, Gaspare R. Marchese, 87-10 149th Avenue, Howard Beach, Queens, New York, filed a petition for a hearing to review a determination under Article 20 of the Tax Law. (File No. 13513).

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 May 20, 1976 and April 28, 1977. Applicant appeared by John J. Nigro, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the determination of cigarette tax due on unstamped cigarettes issued against Gaspare R. Marchese under Article 20 of the Tax Law was correct.

FINDINGS OF FACT

1. Applicant, Gaspare Marchese, was arrested on January 19, 1970 by a Cigarette Tax Enforcement Officer in the driveway of a detached garage next to his residence. Four others were also arrested at the same address.

2. Applicant, Gaspare Marchese, was observed by a Cigarette Tax Enforcement Officer carrying a case of cigarettes from the garage to an automobile standing in front of it. He was then arrested and the cases in the garage were examined. One hundred cartons were opened and found to contain packs of cigarettes bearing no New York State cigarette tax stamp. These were initialed for identification by the Tax Enforcement Officer.

3. The Cigarette Tax Enforcement Officers seized all the cigarettes found in the garage, the cellar of applicant's house, and in the automobile into which he had been seen loading cigarettes. The total seized was 5,898 cartons of unstamped cigarettes.

4. The Miscellaneous Tax Bureau gave no evidence that applicant had been charged with possession of any unstamped cigarettes prior to January 19, 1970. No explanation was given at the formal hearing as to the source or validity of the Notice of Determination No. 1729 statement "Unstamped cigarettes in possession prior to January 19, 1970 . . . 29,490 cartons."

5. Applicant, Gaspare R. Marchese, pleaded "Guilty" in the Supreme Court of Richmond County to having acted in concert with others and having aided others, and having possessed or transported for sale 20,000 unstamped cigarettes (100 cartons). The Court fined applicant, Gaspare R. Marchese, the sum of \$500.00 and gave him an unconditional discharge on February 3, 1971.

6. The Miscellaneous Tax Bureau adduced no proof of the possession by applicant, Gaspare R. Marchese, of any unstamped cigarettes other than the 100 cartons of which he admitted possession.

7. Applicant, Gaspare R. Marchese, did not have a license as a wholesale dealer of cigarettes on January 19, 1970.

8. Applicant, Gaspare R. Marchese, has not paid the cigarette tax assessed against him by the Miscellaneous Tax Bureau as follows:

Unstamped cigarettes in possession	
prior to January 19, 1970 - - - - -	29,490 cartons
Less cigarettes seized & forfeited - - -	<u>5,898</u> cartons
Cigarettes subject to tax - - - - -	23,592 cartons
Cigarette tax at \$1.20 per carton	\$28,310.40
Penalty at 50%	<u>14,155.20</u>
Total tax due	\$42,465.60

9. Applicant, Gaspare R. Marchese, has relied upon the legal advice of his attorney in delaying payment of the tax assessed.

CONCLUSIONS OF LAW

A. That applicant, Gaspare R. Marchese's plea of "Guilty" to possession for sale of 100 cartons of unstamped cigarettes and his transportation of more than 20,000 cigarettes which had not been tax-stamped, bring him squarely within the purview of section 481 of Article 20 of the Tax Law.

B. That in the absence of proof of applicant's possession of the 29,490 cartons upon which applicant, Gaspare R. Marchese, was assessed in Determination No. 1729 dated September 2, 1971, that determination must be modified.

C. That the tax to be assessed should be:

100 cartons at \$1.20	\$ 120.00
Penalty at 50%	60.00
Penalty under section 481-1(b) at \$10.00 a carton	1,000.00
	<hr/>
Total Due	\$1,180.00

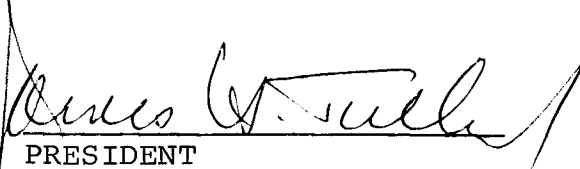
That the applicant's delay in making payment of this tax is excusable, and any further penalty under section 481(a) should be waived.

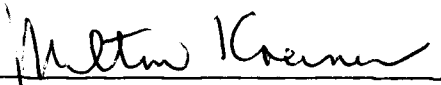
D. That the application of Gaspare R. Marchese for redetermination of the assessment of September 2, 1971 is granted to the extent of reducing the tax due to \$1,180.00, and of instructing

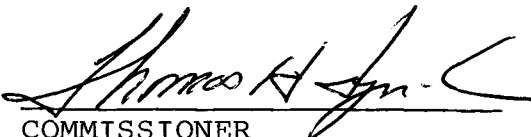
the Miscellaneous Tax Bureau to issue a modified determination in accordance with this decision. The petition of applicant, Gaspare R. Marchese, is in all other respects denied.

DATED: Albany, New York  
May 3, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER