

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT MARTELLO

AFFIDAVIT OF MAILING

For a ~~Rehearing under Article 20 of the Tax Law for the Year 1975~~
~~Rehearing under Article 20 of the Tax Law for the Year 1975~~
Hearing to Review a Determination
under Article (x) 20 of the
Tax Law for the Year (x) 1975.

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 16th day of March, 1978, he served the within
Notice of Decision by (certified) mail upon Albert Martello

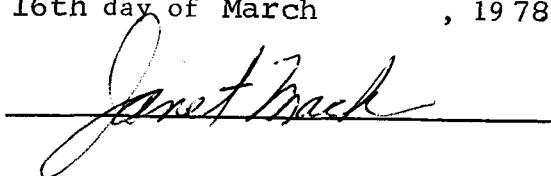
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Albert Martello
104-41 Alstyne Avenue
Corona, New York

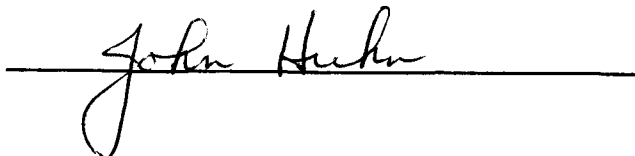
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

16th day of March, 1978







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

March 16, 1978

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

Mr. Albert Martello
104-41 Alstyne Avenue
Corona, New York

Dear Mr. Martello:

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 ~~(8)~~ **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. Nendza
Assistant Director

cc: ~~TAXPAYER'S REPRESENTATIVE~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ALBERT MARTELLO	:	DECISION
for a Hearing to Review a Determination	:	
under Article 20 of the Tax Law for the	:	
Year 1975.	:	

Applicant, Albert Martello, 104-41 Alstyne Avenue, Corona, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1975 (File No. 17080).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 24, 1977 at 2:45 P.M. The applicant appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the penalty of \$2,801.80 imposed on the applicant for the possession of unstamped cigarettes should be reduced.

FINDINGS OF FACT

1. On September 24, 1975, the applicant, Albert Martello, had in his possession and under his control 1,410.9 cartons of unstamped cigarettes.

2. Applicant was never granted a wholesale dealer's license to sell cigarettes.

3. Applicant was convicted in Criminal Court of the City of New York of unlawful possession of unstamped cigarettes. The court imposed a fine of \$2,000.00 or three months in jail.

4. On October 25, 1976, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due under section 481.1(b) of the Tax Law against applicant. Said Notice provided for a penalty of \$2.00 per carton on 1,400.9 of the 1410.9 cartons of cigarettes which were in the applicant's possession on September 24, 1975. The total amount determined to be due was \$2,801.80.

5. Applicant timely applied for a hearing to review said determination.

CONCLUSIONS OF LAW

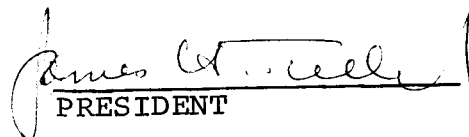
A. That under section 481.1(b) of the Tax Law, the State Tax Commission may impose a penalty of not more than \$100.00 for each 200 cigarettes found in unstamped packages in excess of 2,000 such cigarettes when in the possession or under the control of any person. Thus, the penalty against applicant could have been as much as \$100.00 per carton, or a total of \$140,090.00.

B. That although in its discretion the State Tax Commission may remit all or part of the penalty imposed under section 481.1(b) of the Tax Law, the record in this case does not justify a reduction in penalty to less than the \$2.00 per carton, or a total of \$2,801.80, the amount determined by the Miscellaneous Tax Bureau to be due.

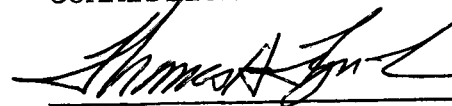
C. That the application of Albert Martello is denied and the Notice of Determination of Tax Due dated October 25, 1976 is sustained.

DATED: Albany, New York
March 16, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER