

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Vincent J. Mattera :

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

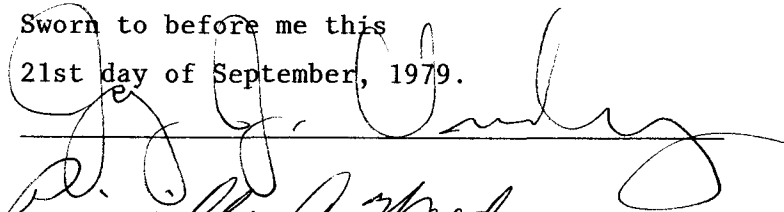
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Decision by mail upon Vincent J. Mattera, the petitioner in the within proceeding, by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

Vincent J. Mattera
656 E. 12 St.
New York, NY

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.


Priscilla A. Wood

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

Vincent J. Mattera
656 E. 12 St.
New York, NY

Dear Mr. Mattera:

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", written in a cursive style.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
VINCENT J. MATTERA : DECISION
for a Hearing to Review a Determination :
under Article 20 of the Tax Law for the :
Year 1973. :
:

Applicant, Vincent J. Mattera, 656 East 12th Street, New York, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1973 (File No. 15007).

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 April 29, 1977 at 11:20 A.M., and on May 16, 1978 at 9:15 A.M. Applicant appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (James Morris, 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 185 cartons of cigarettes bearing no New York cigarette tax stamp was proper.

FINDINGS OF FACT

1. On December 5, 1973, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due under Cigarette Tax Law (Article 20, Section 481.1(b)) against applicant, Vincent J. Mattera. The Notice imposed a penalty of \$25.00 per carton on 185 of 195 cartons seized on October 16, 1973, for a total penalty of \$4,625.00.

2. Applicant was arrested at his home on October 16, 1973 and charged with possession of 195 cartons of cigarettes which bore no New York cigarette tax stamp.

3. Applicant appeared and testified at the hearing. He testified that on the date in question, he had been in possession of unstamped cigarettes. He stated that on November 1, 1973, he had pleaded "Guilty" in New York City Criminal Court to the misdemeanor of violating section 481.2 of Article 20 of the Tax Law and was fined \$250.00.

4. Applicant is seventy-one years of age and in very poor health. His sole source of income, in that he is unable to work, is a \$203.00 monthly social security payment. Applicant's involvement in selling cigarettes which bore no New York cigarette tax stamp is limited to the matter at hand and one other instance.

CONCLUSIONS OF LAW

A. That applicant, Vincent J. Mattera, was in possession of or had under his control on October 16, 1973, 195 cartons of cigarettes which bore no 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 of 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 regular cigarette trafficking and applicant's present circumstances, the Commission determines that the penalty shall be reduced to five dollars per carton for a total of \$925.00.

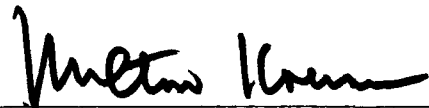
E. That except as provided in Conclusion of Law "D" above, the application of Vincent J. Mattera is denied and the Notice of Determination dated December 5, 1973 is hereby sustained.

DATED: Albany, New York

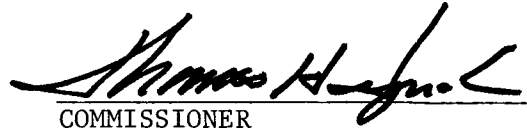
STATE TAX COMMISSION

SEP 21 1979

PRESIDENT



COMMISSIONER



COMMISSIONER