

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Antonina Ogden

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 1977. :

State of New York
County of Albany

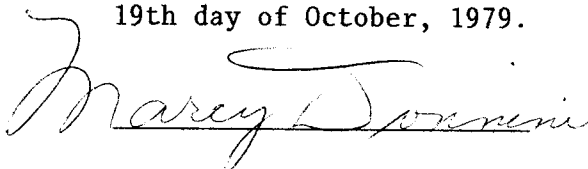
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by mail upon Antonina Ogden, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

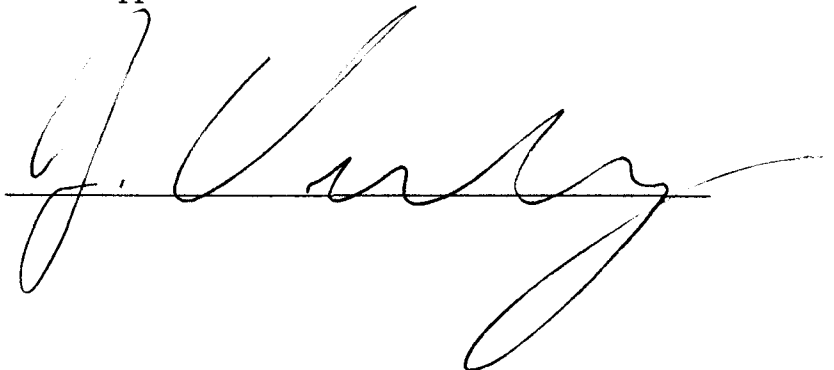
Antonina Ogden
515 - 11th St.
Brooklyn, NY 11215

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
19th day of October, 1979.


Mary L. Doremi


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

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Antonina Ogden :

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for Redetermination of a Deficiency or a Revision :

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Cigarette Tax :

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for the Year 1977. :

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 19th day of October, 1979, he served the within notice of Decision by mail upon John R. Serpico the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

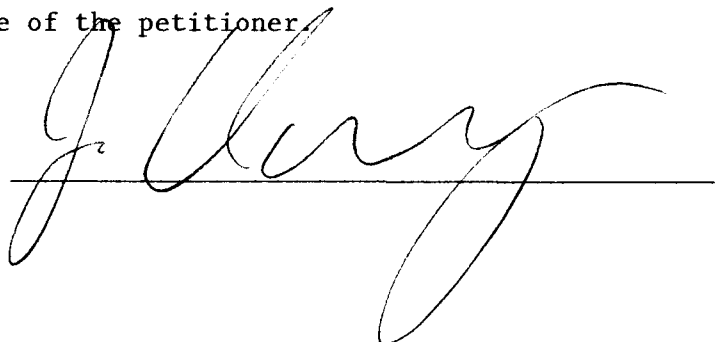
Mr. John R. Serpico
186 Joralemon St.
Brooklyn, NY 11215

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
19th day of October, 1979.


Mary J. Donini


Jay Vredenburg

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

October 19, 1979

Antonina Ogden
515 - 11th St.
Brooklyn, NY 11215

Dear Ms. Ogden:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
John R. Serpico
186 Joralemon St.
Brooklyn, NY 11215
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
ANTONINA OGDEN	:	DECISION
	:	
for a Hearing to Review a Determination	:	
under Article 20 of the Tax Law for the	:	
Year 1977.	:	

Applicant, Antonina Ogden, 515 11th Street, Brooklyn, New York 11215, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1977 (File Nos. 21634 and 20587).

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 11, 1978 at 10:00 A.M. and on May 8, 1979 at 3:00 P.M. Applicant appeared by John R. Serpico, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the imposition on applicant of a \$1,235.80 penalty (pursuant to section 481.1(b) of the Tax Law) for possession of or control over improperly stamped cigarettes was proper.

FINDINGS OF FACT

1. On October 18, 1977, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due Under Cigarette Tax Law to applicant, Antonina Ogden, asserting a total penalty of \$1,235.80. This was based on a seizure of 327.9 cartons of unstamped cigarettes on May 9, 1977.

2. On May 9, 1977, a supervisor from the Special Investigations Bureau

of the Department of Taxation and Finance telephoned a Bureau investigator that he was observing several persons at 575 Dahill Road, Brooklyn, New York, who appeared to be in possession of unstamped cigarettes at that address.

3. In response to that telephone call, said investigator arrested applicant and two others at the trunk of applicant's automobile, which was parked in front of 575 Dahill Road, Brooklyn.

4. Applicant's purpose at the Brooklyn address was to pick up 92 cartons of cigarettes which she had previously ordered from a resident of that address.

5. Based on the affidavit of the arresting investigator that applicant was knowingly in possession of 92 cartons of unstamped cigarettes, a criminal misdemeanor charge was brought against applicant under section 481.2 of the Tax Law. A Certificate of Disposition of that charge shows that the case was adjourned in contemplation of dismissal. (People v. Ogden, Kings County Criminal Court PAR 2, No. K727450/77 (June 6, 1977)).

6. Applicant has no record of prior involvement in the trafficking of unstamped cigarettes.

CONCLUSIONS OF LAW

A. That on May 9, 1977, applicant, Antonina Ogden, was in possession of or had under her control 92 cartons of cigarettes, and that the packs of cigarettes contained therein did not bear New York State 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, and that the discretion exists for the Commission to remit all or part of said penalty.

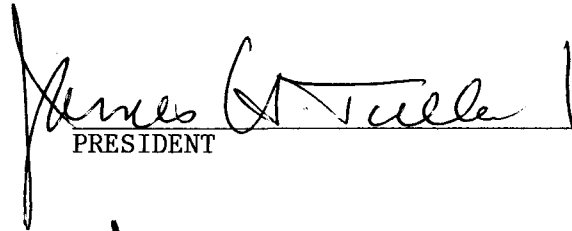
C. That since this is applicant's first such involvement, a penalty of \$5.00 per carton for 82 cartons should be assessed in the amount of \$410.00.

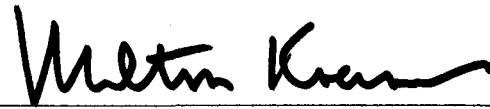
D. That except as modified in Conclusion of Law "C", the application of Antonina Ogden is denied.

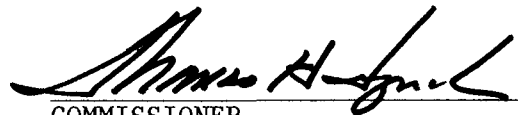
DATED: Albany, New York

STATE TAX COMMISSION

OCT 19 1979


PRESIDENT


COMMISSIONER


COMMISSIONER