

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY J. PESCE

AFFIDAVIT OF MAILING

For a ~~Representation~~ :  
~~XXXXXX~~  
~~XXXXXX~~ Hearing to Review a Determination  
~~XXXXXX~~ under Article ~~(x)~~ 20 of the  
Tax Law for the Year ~~(s) XXXXXXXX~~ 1976.:

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 Anthony J. Pesce

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Anthony J. Pesce  
3488 Webster Avenue, Apt. 9  
Bronx, New York

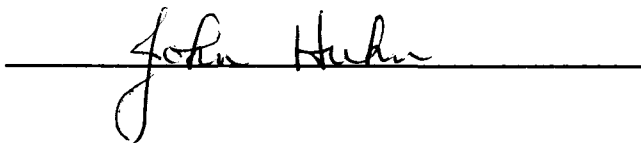
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

16th day of March, 1978







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

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

**March 16, 1978**

**Mr. Anthony J. Pesce**  
**3488 Webster Avenue, Apt. 9**  
**Bronx, New York**

**Dear Mr. Pesce:**

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,

**Aloysius J. Nendza**  
**Assistant Director**

cc: ~~Petitioner's Representative~~  
~~Taxing Bureau's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
ANTHONY J. PESCE : DECISION  
for a Hearing to Review a Determination :  
under Article 20 of the Tax Law for the :  
Year 1976. :

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Applicant, Anthony J. Pesce, 3488 Webster Avenue, Apt. 9, Bronx, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1976 (File No. 17081).

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 25, 1977 at 2:45 P.M. The applicant appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

#### ISSUE

Whether the penalty imposed on applicant for unlawful possession of unstamped cigarettes was proper.

#### FINDINGS OF FACT

1. On July 22, 1976, applicant, Anthony J. Pesce, had in his possession and under his control 270.4 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 \$500.00 or sixty days in jail. The applicant paid the fine.

4. On October 27, 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 \$4.00 per carton on 260.4 out of the 270.4 cartons of cigarettes which were in the applicant's possession on July 22, 1976. The total amount determined to be due was \$1,041.60.

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 possession or under the control of any person. Thus, the penalty against the applicant could have been as much as \$100.00 per carton for 260.4 cartons, or a total of \$26,040.00.

B. That the penalty imposed against applicant by the State Tax Commission of \$4.00 per carton on 260.4 cartons for a total amount due of \$1,041.60 was proper.

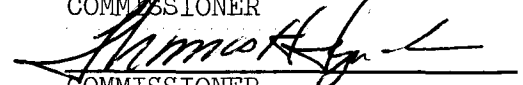
C. That the application of Anthony J. Pesce is denied and the Notice of Determination of Tax Due dated October 27, 1976 is sustained.

DATED: Albany, New York  
March 16, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER