

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

John Priditera :

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 1974. :

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 28th day of September, 1979, he served the within notice of Decision by mail upon John Priditera, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Priditera

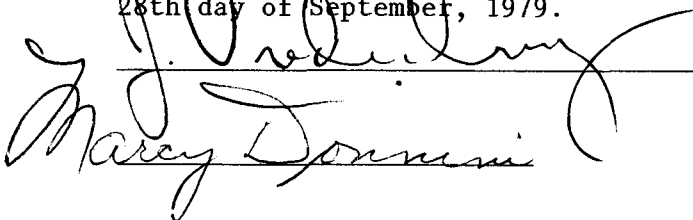
1677 84th St.

Brooklyn, 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  
28th day of September, 1979.

  
\_\_\_\_\_  
Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

John Priditera  
1677 84th St.  
Brooklyn, NY

Dear Mr. Priditera:

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 cursive script, appearing to read "Robert F. Mully".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
JOHN PRIDITERA : DECISION  
for a Hearing to Review a Determination under :  
Article 20 of the Tax Law for the Year 1974. :  
:

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Applicant, John Priditera, 1677 84th Street, Brooklyn, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1974 (File No. 18957).

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 February 16, 1978 at 9:50 A.M. Applicant appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

Whether the penalty of \$10.00 per carton imposed (pursuant to section 481.1(b) of the Tax Law) on applicant for possession of or control over 893 cartons of improperly stamped cigarettes was proper.

FINDINGS OF FACT

1. On May 8, 1974, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due under Cigarette Tax Law (Article 20, section 481.1(b)) against applicant, John Priditera. Said Notice imposed a penalty of \$10.00 per carton on 893 cartons of cigarettes, out of 903 cartons allegedly seized on April 1, 1974. The total penalty was \$8,930.00.

2. Applicant was arrested on April 1, 1974 in the rear of 1920 85th Street, Brooklyn, New York, where his brother Salvatore has a home. The arrest took place in the garage. A total of 903 cartons of improperly stamped cigarettes were vouchered at the 62nd Precinct of the New York City Police Department.

3. Applicant appeared and testified at the hearing. He stated that this was his first dealing with improperly stamped cigarettes; that he didn't know how many cartons he had bought; that he had sold none; and that the criminal case in the Brooklyn Criminal Court had resulted in his being placed on probation following a plea of "Guilty" to possession of improperly stamped cigarettes. No evidence was presented at the hearing as to the disposition of the criminal charge.

4. Applicant was in possession of 903 cartons of improperly stamped cigarettes on April 1, 1974.

#### CONCLUSIONS OF LAW

A. That applicant, John Priditera, violated section 481.1(b) of the Tax Law in that he was in possession of 903 cartons of improperly stamped cigarettes on April 1, 1974.

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 or unlawfully stamped 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.

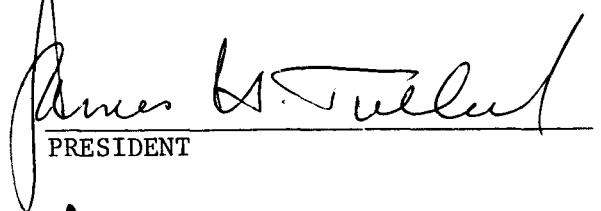
D. That based on the absence of evidence of other involvement in cigarette trafficking, the Commission determines that the penalty shall be reduced to \$2,386.00.

E. That except as provided in Conclusion of Law "D," the application of John Priditera is denied and the Notice of Determination dated May 8, 1974 is hereby sustained.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSION

  
COMMISSION