

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Salvatore 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 Salvatore Priditera, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Salvatore Priditera

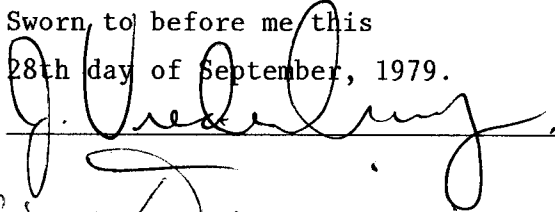
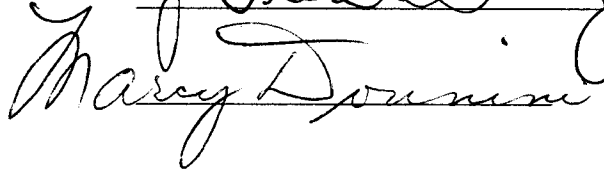
1920 85th St.

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.



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

Salvatore Priditera  
1920 85th 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 D. Tully".

cc: Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

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 9:15 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 Salvatore Priditera. Said Notice was addressed to applicant and/or John Priditera. It 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 assessed was \$8,930.00.

2. On April 1, 1974, applicant was arrested at his home at 1920 85th Street, Brooklyn, New York. Applicant's brother, John Priditera, had been arrested at the garage in the rear of applicant's home. Both were charged with possession of improperly stamped cartons of cigarettes. The cigarettes were in a car driven by John Priditera and in the garage.

3. Applicant had permitted his brother, John Priditera, to use his garage for storage, and such use had started months before the arrest. Applicant had no knowledge of what his brother kept in the garage. The garage was unused by applicant who parked his car on the street.

4. On April 2, 1974, applicant was arraigned in Brooklyn Criminal Court on the misdemeanor of possession of improperly stamped cigarettes. On the signed statement of the Kings County District Attorney that he did not have a legally sufficient case, the charge against applicant was dismissed.

5. No evidence was adduced at the hearing to establish that applicant had knowledge of any improperly stamped cigarettes in his garage, nor was there any credible evidence of the number of cigarettes seized or of a receipt given therefor.

CONCLUSIONS OF LAW

A. That applicant, Salvatore Priditera, was not in possession of, nor did he have control over unstamped or unlawfully stamped cigarettes, within the meaning and intent of section 481.1(b) of the Tax Law; therefore, the application is granted and the Notice of Determination issued May 8, 1974 to Salvatore Priditera is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1979

PRESIDENT

COMMISSIONER

COMMISSIONER