

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT ROMAN

AFFIDAVIT OF MAILING

For a ~~Return~~ ~~under Article 20~~ ~~of the~~ ~~Tax Law for the~~ ~~Year 1976~~ ~~Period~~ ~~of~~ ~~the~~ ~~June 4, 1976.~~
Hearing to Review a Determination
of Taxes under Article (x) 20 of the
Tax Law for the Year (x) Period (x)
June 4, 1976.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 5th day of April, 1978, she served the within
Notice of Decision by (certified) mail upon Howard H. Weiswasser

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Howard H. Weiswasser, Esq.
Weiswasser & Weiswasser
32 Court Street
Brooklyn, New York 11201

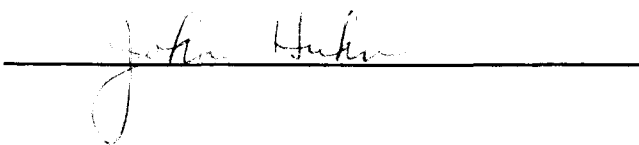
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

5th day of April, 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

April 5, 1978

Mr. Robert Roman
71 Bishop Street
Staten Island, New York 10306

Dear Mr. Roman:

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 ~~(x)~~ **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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ROBERT ROMAN	:	DECISION
for a Hearing to Review a Determination	:	
under Article 20 of the Tax Law for the	:	
Period June 4, 1976.	:	

Applicant, Robert Roman, 71 Bishop Street, Staten Island, New York 10306, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the period June 4, 1976 (File No. 15228).

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 May 16, 1977 at 3:25 P.M. The applicant appeared by Weiswasser and Weiswasser (Howard H. Weiswasser, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the penalty of \$3,771.40 imposed against applicant for unlawful possession of unstamped cigarettes was proper.

FINDINGS OF FACT

1. Applicant, Robert Roman, was never granted a wholesale dealer's license to sell cigarettes.

2. On January 13, 1976, applicant was arrested by agents of the Special Investigations Bureau of the Department of Taxation and Finance, together with New York City police officers, at the trunk of his automobile in the driveway of his

residence at 71 Bishop Street, Staten Island, New York. The agents found and seized 276 cartons of cigarettes in applicant's automobile and 1,619.7 cartons of cigarettes in the basement of applicant's residence. None of the 1,895.7 cartons of cigarettes bore New York tax stamps.

3. On January 30, 1976, applicant pleaded guilty in the Criminal Court of the City of New York, Richmond County, to a charge of illegal possession of the 276 cartons of unstamped cigarettes seized from his automobile, a class "A" misdemeanor, in full satisfaction of all charges in the complaint. Prior to sentencing, the court inquired as to whether the Department of Taxation and Finance was imposing a penalty on applicant. A Special Investigation Bureau representative advised the court that the State would "impose a fine and another tax levy". The court then fined applicant \$100.00 or thirty days.

4. On June 4, 1976, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due under section 481.1(b) of the Tax Law against applicant, imposing a penalty of \$2.00 per carton on 1,885.7 out of the 1,895.7 cartons of unstamped cigarettes found in his possession and under his control on January 13, 1976.

5. The 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 the possession or under the control of any person. Therefore, the penalty imposed against applicant could have been as much as \$100.00 per carton, or a total of \$188,570.40.

B. That the penalty of \$3,771.⁴⁰ imposed upon applicant, Robert Rowan, for unlawful possession of unstamped cigarettes on January 13, 1976 was proper.

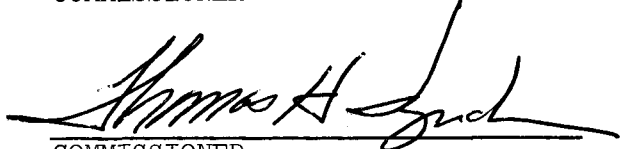
C. That the application of Robert Roman is denied and the Notice of Determination of Tax Due dated June 4, 1976 is sustained.

DATED: Albany, New York
April 5, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER