

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

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

October 6, 1978

REMAILED:

October 17, 1978

**Mr. John Savino
18 Oxford Road
East Rockaway, New York 11518**

Dear Mr. Savino:

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(§) **473** 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,

**Michael Alexander
Supervising Tax
Hearing Officer**

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 | : | DECISION |
| of | : | |
| JOHN SAVINO | : | |
| for a Hearing to Review a Determination under | : | |
| Article 20 of the Tax Law for the Year 1974. | : | |

Applicant, John Savino, 18 Oxford Road, East Rockaway, New York 11518, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1974 (File No. 15875).

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 July 12, 1977 at 2:45 P.M. The applicant appeared by Coiro & Quagliata, Esqs. (Michael F. Coiro, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Notice of Determination of Tax Due dated August 7, 1974, imposing a Cigarette Tax penalty against applicant, should be sustained.

FINDINGS OF FACT

1. On August 7, 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 Savino. Said Notice imposed a penalty of \$20.00 per carton on 6,863 cartons of cigarettes out of 6,873 cartons allegedly seized on February 10, 1974. The total of the penalty was \$137,260.00.

2. Applicant was arrested at his home in East Rockaway, Nassau County, New York, at 9:15 A.M. on October 4, 1973, by a New York City police officer who had a warrant for his arrest. He was taken to a police station in Manhattan and subsequently pleaded guilty to a misdemeanor charge of conspiracy in Supreme Court, New York County.

3. The Miscellaneous Tax Bureau introduced no admissible evidence relating to any connection between the applicant and the seizure of cigarettes which allegedly took place more than four months later on February 10, 1974.

4. Applicant testified that he was not present when the cigarettes at issue were seized at the premises of one Joseph Winograd and that he never had possession or control of said cigarettes. He claimed that his plea of guilty to the conspiracy charge was based upon the fact that he had introduced one Thomas Delio to Joseph Winograd.

CONCLUSIONS OF LAW

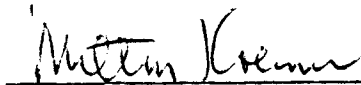
A. That applicant, John Savino, was not in possession or control of unstamped or unlawfully stamped cigarettes within the meaning and intent of section 481.1(b) of the Tax Law. Accordingly, the penalty imposed against applicant pursuant to said section cannot be sustained.

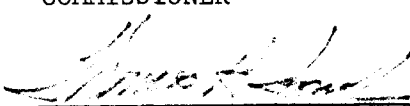
B. That the application of John Savino is granted and the Notice of Determination of Tax Due dated August 7, 1974 is cancelled.

DATED: Albany, New York
October 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M **FORMAL HEARING**
STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Michael F. Coiro, Jr., Esq.
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