

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS SCHIRO

AFFIDAVIT OF MAILING

For a ~~Redetermination of a Deficiency or~~
~~Revision of a Deficiency or Refund~~
of Hearing to Review a Determination
under Article (s) 20 of the
Tax Law for the Year (s) ~~xxxxxxxxxx~~ 1977. :

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 15th day of March, 1979, she served the within
Notice of Decision by (certified) mail upon Louis Schiro
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Louis Schiro
325 Foster Avenue
Brooklyn, 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 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

15th day of March, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

LOUIS SCHIRO

For a ~~Redetermination of a Deficiency~~ :
~~xxxRedetermination of a Deficiencyxxx Refund~~ :
of Hearing to Review a Determination :
Taxes under Article (a) 20 of the :
Tax Law for the Year (xxxPeriod(s) 1977. :

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 15th day of March , 199 , she served the within
Notice of Decision by (certified) mail upon Bernard Udell

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Bernard Udell, Esq.
50 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

15th day of March , 19 79

Marilyn J. Papneau

John Huhn



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 15, 1979

Mr. Louis Schiro
325 Foster Avenue
Brooklyn, New York

Dear Mr. Schiro:

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,

MICHAEL ALEXANDER
SUPERVISING TAX HEARING OFFICER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE TAX COMMISSION

1. Under date of April 27, 1977, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due under Cigarette

Tax Law (Article 20, section 481(b)) to applicant, Louis Schiro. Said Notice asserted a penalty of \$516.00 due for cigarettes seized on March 24, 1977. The total penalty consisted of a penalty of \$5.00 per carton for 100 cartons, as well as a penalty of \$4.00 per carton for 4 cartons.

2. On that date, applicant was apprehended by officers assigned to the Special Investigations Bureau, Cigarette Tax Bureau of the Department of Taxation and Finance. In applicant's car were found 15 cartons of improperly stamped cigarettes. In the basement of applicant's house were found 99 cartons of improperly stamped cigarettes.

3. On April 7, 1977, in Criminal Court of the City of New York, County of Kings, applicant pleaded guilty to violation of section 240.20 of the Penal Law (disorderly conduct) and was fined \$200.00. The original offense for which he was arrested was a violation of section 481.21 of Article 20 of the New York Tax Law.

CONCLUSIONS OF LAW

A. That section 481(b) of Article 20 of the Tax Law provides, in applicable part, that:

"In addition to any other penalty imposed by this article, the tax commission may impose a penalty of not more than one hundred dollars for each two hundred cigarettes or fraction thereof in excess of two thousand in unstamped or unlawfully stamped packages in the possession or under the control of any person." (Emphasis added.)

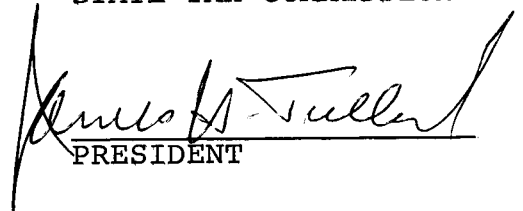
B. That applicant was in possession or control of 114 cartons of improperly stamped cigarettes which were found in his car and in the basement of his house on March 24, 1977.

C. That the application of Louis Schiro is denied and the Notice of Determination of Tax Due issued April 27, 1977 is sustained.

DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER