

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Maurhea Corporation :
d/b/a Sparrow Tobacco & Cigar : 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 . :

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 21st day of September, 1979, he served the within notice of Determination by mail upon Maurhea Corporation, d/b/a Sparrow Tobacco & Cigar, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Maurhea Corporation
d/b/a Sparrow Tobacco & Cigar
126 Washington St.
Hoboken, NJ 07030

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

21st day of September, 1979.

Jay J. Vredenburg
Victoria Gary

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Maurhea Corporation :
d/b/a Sparrow Tobacco & Cigar : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Cigarette Tax :
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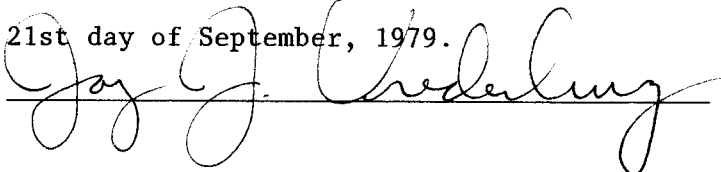
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Albert E. Silbowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Albert E. Silbowitz
89-31 161st St.
Jamaica, NY 11432

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
21st day of September, 1979.



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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

Maurhea Corporation
d/b/a Sparrow Tobacco & Cigar
126 Washington St.
Hoboken, NJ 07030

Gentlemen:

Please take notice of the Determination 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,



cc: Petitioner's Representative
Albert E. Silbowitz
89-31 161st St.
Jamaica, NY 11432
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
MAURHEA CORPORATION	:	DETERMINATION
D/B/A SPARROW TOBACCO AND CIGAR	:	
	:	
for Redetermination of a License	:	
Revocation under Article 20 of the Tax	:	
Law.	:	

Applicant, Maurhea Corporation d/b/a Sparrow Tobacco and Cigar, 126 Washington Street, Hoboken, New Jersey, filed an application for a hearing to review a determination under Article 20 of the Tax Law (File No. 19389).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, and at its offices in Building #9, State Campus, Albany, New York, on September 9, October 5 through 7, October 13 and December 8, 1977, and on January 10, 1978.

Applicants appeared by Albert E. Silbowitz, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens and Arthur Rosen, Esqs., of counsel).

ISSUES

I. Whether the Miscellaneous Tax Bureau's action of denying applicant's application for a license to conduct business in New York and of suspending its right to conduct business in New Jersey was supported by substantial evidence.

II. Whether the decision in Borough Hall Oxford-Tobacco Corp. v. New York State Tax Commission, No. 72-077 (Sup. Ct. N.Y. June 22, 1978) constitutes collateral estoppel in the present proceeding.

FINDINGS OF FACT

1. In May of 1976, applicant, Maurhea Corporation d/b/a Sparrow Tobacco and Cigar, applied to New York State for a license as a wholesale cigarette dealer under Article 20 of the Tax Law, in connection with its business in Hoboken, New Jersey.

2. In October of 1976, the license was issued by the State Tax Commission.

3. Applicant has transacted no business since the date it was licensed, up through the commencement of hearings in the present proceeding in September of 1977.

4. Applicant sought advice from the Miscellaneous Tax Bureau as to whether it was necessary to file monthly reports for periods in which there were no transactions; pursuant to its telephone conversation with an employee of the Miscellaneous Tax Bureau, applicant filed no reports, but did send a letter to the Bureau confirming that no transactions had taken place.

5. Applicant thereafter received notice from the State Tax Commission, requesting that reports be filed reflecting the absence of transactions; applicant consequently submitted such reports within the required period.

6. In September of 1976, Philip Katz resigned from his position as an officer and director of Maurhea Corporation, and new officers were elected.

7. Applicant did not notify the State Tax Commission of such change of officers.

8. On June 27, 1977, applicant applied to the Commission for a license in connection with its plan to relocate the business in New York State.

9. On July 7, 1977, the Bureau issued a letter denying applicant's application for a New York license, refusing the request to transfer authority from New Jersey, and suspending the license to do business at the New Jersey location.

10. Felicia Katz, chief officer of applicant corporation, was also the president and a director of Borough Hall-Oxford Tobacco Corporation ("Borough Hall"), and had held such position for approximately four years at the start of this proceeding in September of 1977. She had also been vice-president of the corporation for approximately three years before being elected president.

11. On September 15, 1976, Special Investigations Bureau Agents Urzi, Vecchio, Healey, Lewis and Mullins appeared at the premises of Borough Hall in Brooklyn, New York, to inspect tax stamps on cigarettes at that location.

12. Philip Katz, an officer of Borough Hall, was present at the Borough Hall premises on that date.

13. After approximately twenty minutes of checking cigarettes, Chief Investigator Urzi sent Agents Healey and Lewis to Pitney Bowes laboratories in Stamford, Connecticut, with four cartons of cigarettes taken from the Borough Hall premises.

14. Approximately one and a half hours are required to travel by car from the Borough Hall premises to the Pitney Bowes laboratory in Stamford, Connecticut.

15. At Pitney Bowes, Administrators of Cigarette Tax Services Hellard and Geisler inspected the Borough Hall cigarette packages by comparing the tax stamp impressions on them with those on the master sheet made by Pitney Bowes from the Pitney Bowes meter used for imprinting the stamp.

16. The Pitney Bowes meters imprint different codes. In making their comparison, Hellard and Geisler used the master sheet made from a meter which imprinted the same code as that reproduced on the cigarette packages examined, i.e., the code known as meter number 32-07.

17. Hellard and Geisler found that the impressions on the cigarette packages in two of the four cartons did not conform to the patterns on the master sheet made from meter number 32-07.

18. By stating that the impressions "do not conform", Pitney Bowes personnel intend to convey that the impressions of a particular Pitney Bowes code on the cigarette packages were not made by the Pitney Bowes meter used to imprint that code.

19. Hellard and Geisler's ability to effectively compare meter stamp impressions to a master sheet is not impaired by variations inherent in the imprinting process, such as over-inking or blurring.

20. Approximately one and a half to two hours after having dispatched Agents Lewis and Healey to the Pitney Bowes laboratory, Chief Investigator Urzi, while still at the Borough Hall premises, received a telephone call from them, whereupon Urzi informed Agent Mullins that, Pitney Bowes had "certified the two cartons were counterfeit stamped".

21. Agents Lewis and Healey returned from the Pitney Bowes laboratory, and Healey placed Philip Katz under arrest.

22. A U-Haul truck was obtained by Investigator Urzi. Under the supervision of Agent Mullins, a departmental investigator and a Borough Hall employee loaded the U-Haul with the cases of cigarette packages bearing impressions of code 32-07, counting the cases as they loaded them.

23. The cigarettes were transported to Two World Trade Center, New York, New York, where they were unloaded and the number of cases was again checked and then tallied against the count made when the truck was loaded.

24. These cigarettes were placed in the evidence vault area of the Special Investigations Bureau at Level B-5 of the Two World Trade Center building.

25. A receipt for the cigarettes, dated September 15, 1976, was issued to Philip Katz, with the signatures of Arresting Investigator Healey and of the Property Clerk at Two World Trade Center on that date.

26. Francis Tucker commenced acting as Property Clerk at Two World Trade Center on October 4, 1976.

27. Tucker's first assignment as Property Clerk was to attend a two-hour course at Pitney Bowes on October 4, 1976, for instruction in the testing of tax stamp impressions of code number 32-07. Senior Investigator Donovan also attended the course on that date.

28. On October 5, 1976, Agents Urzi and Mullins appointed Tucker to supervise the task of inspecting the cigarette packages taken from the Borough Hall premises and of determining the propriety of the tax stamp impressions thereon. Four investigators, including Donovan, were assigned to aid Tucker in the task.

29. Tucker and Donovan instructed the other three investigators in what they had learned at the Pitney Bowes course about meter code number 32-07.

30. On October 8, 1976, the Tax Commission issued a notice to Borough Hall declaring as forfeited 9,545 cartons of the cigarettes taken from the Borough Hall premises.

31. Tucker's inspection of the cigarettes commenced on October 5, 1976 and lasted for several weeks.

32. When the inspection had been completed, Tucker submitted the results to Urzi, reporting that of the 12,974 cartons seized, 3,429 were "good returned," 9,094 were "counterfeit," and 451 were "improper". An "improper" stamp, in Tucker's terms, was one he was unable to read due to smudging. The total number that Tucker reported as either "improper" or "counterfeit" was 9,545.

33. A criminal proceeding against Philip Katz based on the alleged improper tax stamps on cigarettes at the Borough Hall premises resulted in a dismissal of the charges against him.

34. In an Article 78 proceeding brought by Borough Hall for review of the

State Tax Commission's forfeiture of the cigarettes and the return of same, the court held that said cigarettes had not been proven to bear improper tax stamps. Borough Hall-Oxford Tobacco Corp. v. New York State Tax Commission, No. 72-077 (Sup. Ct. N.Y. June 22, 1978.)

CONCLUSIONS OF LAW

A. That applicant, Maurhea Corporation d/b/a Sparrow Tobacco and Cigar, was not required to apply for a new or different license in order to change its main business location from New Jersey to New York, in that it had already obtained a New York State license as a tax agent and cigarette wholesale dealer in October of 1976. (20 NYCRR §332.1(b))

B. That applicant has sustained the burden of proof required (in accordance with section 306 of the State Administrative Procedure Act) to establish that the Miscellaneous Tax Bureau's action of denying its application for a license to conduct business in New York and of suspending its right to conduct business in New Jersey was not supported by substantial evidence.

C. That applicant's initial failure to file monthly reports for periods in which no business was transacted does not constitute a violation of 20 NYCRR §337.1(b), in that the subsequent filing of such reports within ten days of receipt of notice given by the Commission brought applicant in substantial compliance with said regulation.

D. That 20 NYCRR §332.1(b), which requires a licensed cigarette wholesale dealer to immediately notify the Commission of any change of its officers, was promulgated January 20, 1977, and that such provision is not retroactive. In not reporting a change of officers that occurred in September of 1976, i.e., prior to the existence and effect of section 332.1(b), applicant was a fortiori not in violation of such provision.

E. That applicant's relationship to Borough Hall Oxford Corporation is

such that a finding of improper cigarette stamping activity at Borough Hall would bear directly on applicant's fitness as a licensed tax agent.

F. That the decision in Borough Hall Oxford Tobacco Corp. v. New York State Tax Commission, an Article 78 proceeding wherein applicant Borough Hall Oxford Tobacco Corporation sought review of the Commission's forfeiture of the very cigarettes that are the subject of the present inquiry, and the return of same, that said cigarettes had not been proven to bear improper tax stamps, constitutes collateral estoppel on that issue in the present proceeding.

G. That the doctrine of collateral estoppel applies to quasi-judicial administrative proceedings as well as to judicial proceedings. (Chaffee v. Lawrence, 282 A.D. 875, 124 N.Y.S.2d 425 (2d Dep't. 1953)).

H. That the degree of proof required in an Article 78 proceeding (e.g., Borough Hall, supra) is the same as or greater than that required in the present proceeding, so that the application of collateral estoppel is appropriate. Cf. Pell v. Board of Education, 34 N.Y.2d 222, 313 N.E.2d 321, 356 N.Y.S.2d 833 (1974) (substantial evidence standard governs in Article 78 proceedings in the nature of certiorari); Association of Surrogates & Supreme Court Reporters v. Bartlett, 40 N.Y.2d 571, 357 N.E.2d 353, 388 N.Y.S.2d 882 (1976) (in an Article 78 mandamus proceeding, petitioner must show a "clear legal right" to the relief requested)

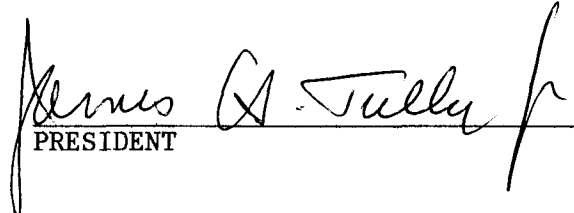
I. That the Miscellaneous Tax Bureau has not proven that suspension or revocation "for cause" pursuant to section 480 of the Tax Law is warranted.

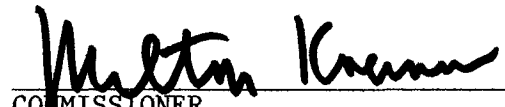
J. That applicant's application is granted in that the reinstatement of its license as a cigarette wholesale dealer and cigarette tax agent is hereby ordered; that the denial of applicant's application for a license as a cigarette wholesale dealer at a New York location issued on July 7, 1977 is hereby

cancelled; and that the suspension of its license and of its appointment as a nonresident agent issued on July 7, 1977 is also cancelled.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO Paul Coburn

Please file. Better address.

September 27, 1979

M-75 (5/76)

From Robert F. Mulligan

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
Maurhea Corporation
d/b/a Sparrow Tobacco and Cigar
For a Redetermination of a ~~Deficiency~~
~~Revision of a Determination~~ ~~or a Refund~~
of License Revocation
Taxes under Article(s) 20 of the
Tax Law. ~~for the Year(s) or Period(s)~~

AFFIDAVIT OF MAILING

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 27th day of September, 1979, he served the within
Notice of Determination by (certified) mail upon Albert E.
Silbowitz (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Albert E. Silbowitz
80-30 164th Street
Jamaica, New York 11432

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

27th day of September, 1979

Victoria Gray

Jay F. Vredenburg

TA-26 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Albert E. Silbowitz
89-37 161st St.
Jamaica, NY 11432



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO . . . Paul Coburn

Returned not deliverable. Please file.

MAURHEA CORPORATION d/b/a SPARROW
TOBACCO & CIGAR

October 5, 1979



New York State Department of
TAXATION and FINANCE

MEMORANDUM

AD-53 (6/76)

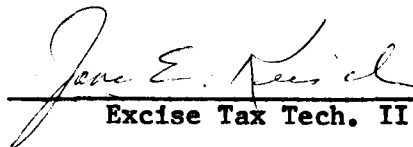
TO: Ms. Wanda Lotkowski
Tax Appeals Bureau
FROM: Miss Jane Kirsch
SUBJECT: Maurhea Corp.
DBA Sparrow Tobacco & Cigar
126 Washington St.
Hoboken, N. J. 07030

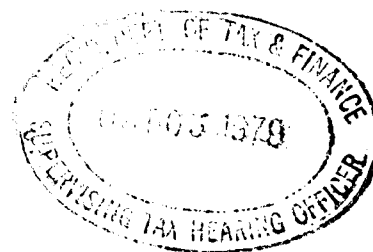
OFFICE: Albany - Cigarette Tax

DATE: October 5, 1979

This will confirm the information given you by telephone. The above address is the only one contained in our files.

JK/ml1


Excise Tax Tech. II



STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Copy Bureau

Grinnell

Maurhea Corporation

d/b/a Sparrow Tobacco & Cigar

126 Washington St.

Hoboken, NJ 07030



Please Return





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 21, 1979

Maurhea Corporation
d/b/a Sparrow Tobacco & Cigar
126 Washington St.
Hoboken, NJ 07030

Gentlemen:

Please take notice of the Determination 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 "Stephen J. Mendez".

cc: Petitioner's Representative
Albert E. Silbowitz
89-31 161st St.
Jamaica, NY 11432
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
MAURHEA CORPORATION	:	DETERMINATION
D/B/A SPARROW TOBACCO AND CIGAR	:	
	:	
for Redetermination of a License	:	
Revocation under Article 20 of the Tax	:	
Law.	:	

Applicant, Maurhea Corporation d/b/a Sparrow Tobacco and Cigar, 126 Washington Street, Hoboken, New Jersey, filed an application for a hearing to review a determination under Article 20 of the Tax Law (File No. 19389).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, and at its offices in Building #9, State Campus, Albany, New York, on September 9, October 5 through 7, October 13 and December 8, 1977, and on January 10, 1978.

Applicants appeared by Albert E. Silbowitz, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens and Arthur Rosen, Esqs., of counsel).

ISSUES

I. Whether the Miscellaneous Tax Bureau's action of denying applicant's application for a license to conduct business in New York and of suspending its right to conduct business in New Jersey was supported by substantial evidence.

II. Whether the decision in Borough Hall Oxford-Tobacco Corp. v. New York State Tax Commission, No. 72-077 (Sup. Ct. N.Y. June 22, 1978) constitutes collateral estoppel in the present proceeding.

FINDINGS OF FACT

1. In May of 1976, applicant, Maurhea Corporation d/b/a Sparrow Tobacco and Cigar, applied to New York State for a license as a wholesale cigarette dealer under Article 20 of the Tax Law, in connection with its business in Hoboken, New Jersey.

2. In October of 1976, the license was issued by the State Tax Commission.

3. Applicant has transacted no business since the date it was licensed, up through the commencement of hearings in the present proceeding in September of 1977.

4. Applicant sought advice from the Miscellaneous Tax Bureau as to whether it was necessary to file monthly reports for periods in which there were no transactions; pursuant to its telephone conversation with an employee of the Miscellaneous Tax Bureau, applicant filed no reports, but did send a letter to the Bureau confirming that no transactions had taken place.

5. Applicant thereafter received notice from the State Tax Commission, requesting that reports be filed reflecting the absence of transactions; applicant consequently submitted such reports within the required period.

6. In September of 1976, Philip Katz resigned from his position as an officer and director of Maurhea Corporation, and new officers were elected.

7. Applicant did not notify the State Tax Commission of such change of officers.

8. On June 27, 1977, applicant applied to the Commission for a license in connection with its plan to relocate the business in New York State.

9. On July 7, 1977, the Bureau issued a letter denying applicant's application for a New York license, refusing the request to transfer authority from New Jersey, and suspending the license to do business at the New Jersey location.

10. Felicia Katz, chief officer of applicant corporation, was also the president and a director of Borough Hall-Oxford Tobacco Corporation ("Borough Hall"), and had held such position for approximately four years at the start of this proceeding in September of 1977. She had also been vice-president of the corporation for approximately three years before being elected president.

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13. After approximately twenty minutes of checking cigarettes, Chief Investigator Urzi sent Agents Healey and Lewis to Pitney Bowes laboratories in Stamford, Connecticut, with four cartons of cigarettes taken from the Borough Hall premises.

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16. The Pitney Bowes meters imprint different codes. In making their comparison, Hellard and Geisler used the master sheet made from a meter which imprinted the same code as that reproduced on the cigarette packages examined, i.e., the code known as meter number 32-07.

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23. The cigarettes were transported to Two World Trade Center, New York, New York, where they were unloaded and the number of cases was again checked and then tallied against the count made when the truck was loaded.

24. These cigarettes were placed in the evidence vault area of the Special Investigations Bureau at Level B-5 of the Two World Trade Center building.

25. A receipt for the cigarettes, dated September 15, 1976, was issued to Philip Katz, with the signatures of Arresting Investigator Healey and of the Property Clerk at Two World Trade Center on that date.

26. Francis Tucker commenced acting as Property Clerk at Two World Trade Center on October 4, 1976.

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CONCLUSIONS OF LAW

A. That applicant, Maurhea Corporation d/b/a Sparrow Tobacco and Cigar, was not required to apply for a new or different license in order to change its main business location from New Jersey to New York, in that it had already obtained a New York State license as a tax agent and cigarette wholesale dealer in October of 1976. (20 NYCRR §332.1(b))

B. That applicant has sustained the burden of proof required (in accordance with section 306 of the State Administrative Procedure Act) to establish that the Miscellaneous Tax Bureau's action of denying its application for a license to conduct business in New York and of suspending its right to conduct business in New Jersey was not supported by substantial evidence.

C. That applicant's initial failure to file monthly reports for periods in which no business was transacted does not constitute a violation of 20 NYCRR §337.1(b), in that the subsequent filing of such reports within ten days of receipt of notice given by the Commission brought applicant in substantial compliance with said regulation.

D. That 20 NYCRR §332.1(b), which requires a licensed cigarette wholesale dealer to immediately notify the Commission of any change of its officers, was promulgated January 20, 1977, and that such provision is not retroactive. In not reporting a change of officers that occurred in September of 1976, i.e., prior to the existence and effect of section 332.1(b), applicant was a fortiori not in violation of such provision.

E. That applicant's relationship to Borough Hall Oxford Corporation is

such that a finding of improper cigarette stamping activity at Borough Hall would bear directly on applicant's fitness as a licensed tax agent.

F. That the decision in Borough Hall Oxford Tobacco Corp. v. New York State Tax Commission, an Article 78 proceeding wherein applicant Borough Hall Oxford Tobacco Corporation sought review of the Commission's forfeiture of the very cigarettes that are the subject of the present inquiry, and the return of same, that said cigarettes had not been proven to bear improper tax stamps, constitutes collateral estoppel on that issue in the present proceeding.

G. That the doctrine of collateral estoppel applies to quasi-judicial administrative proceedings as well as to judicial proceedings. (Chaffee v. Lawrence, 282 A.D. 875, 124 N.Y.S.2d 425 (2d Dep't. 1953)).

H. That the degree of proof required in an Article 78 proceeding (e.g., Borough Hall, supra) is the same as or greater than that required in the present proceeding, so that the application of collateral estoppel is appropriate. Cf. Pell v. Board of Education, 34 N.Y.2d 222, 313 N.E.2d 321, 356 N.Y.S.2d 833 (1974) (substantial evidence standard governs in Article 78 proceedings in the nature of certiorari); Association of Surrogates & Supreme Court Reporters v. Bartlett, 40 N.Y.2d 571, 357 N.E.2d 353, 388 N.Y.S.2d 882 (1976) (in an Article 78 mandamus proceeding, petitioner must show a "clear legal right" to the relief requested)

I. That the Miscellaneous Tax Bureau has not proven that suspension or revocation "for cause" pursuant to section 480 of the Tax Law is warranted.

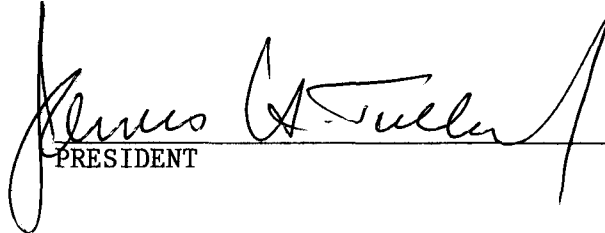
J. That applicant's application is granted in that the reinstatement of its license as a cigarette wholesale dealer and cigarette tax agent is hereby ordered; that the denial of applicant's application for a license as a cigarette wholesale dealer at a New York location issued on July 7, 1977 is hereby

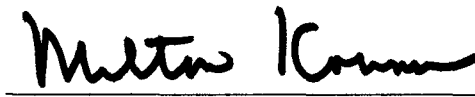
cancelled; and that the suspension of its license and of its appointment as a nonresident agent issued on July 7, 1977 is also cancelled.


DATED: Albany, New York

SEP 21 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER