

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ARTHUR STAHL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Cigarette :  
Taxes under Article (8) 20 of the :  
Tax Law for the Year (~~XXXXXX~~) 1974 :

State of New York  
County of Albany

John Huhn , 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 13th day of September , 19 78, he served the within  
Notice of Decision by (~~certified~~) mail upon Arthur Stahl

~~XXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Arthur Stahl  
216 Sycamore Street  
West Hempstead, 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~~  
~~XXXXXX~~) 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

13th day of September , 1978.

N. P. Walker  
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John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ARTHUR STAHL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Cigarette :  
Taxes under Article (X) 20 of the :  
Tax Law for the Year (~~XXXXXX~~) 1974 :

State of New York  
County of Albany

John Huhn , 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 13th day of September , 1978, he served the within  
Notice of Decision by (~~certified~~) mail upon Morris J. Ezra  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Morris J. Ezra  
225 Broadway  
New York, New York 10007  
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

13th day of September , 1978

V. P. Walker  
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John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ARTHUR STAHL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Cigarette :  
Taxes under Article ~~(X)~~ 20 of the :  
Tax Law for the Year ~~(X) 1974~~ 1974 :

State of New York  
County of Albany

John Huhn, 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 13th day of September, 1978, he served the within  
Notice of Decision by ~~(certified)~~ mail upon Harry Greenbaum, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Harry Greenbaum, Esq.  
250 Broadway  
New York, 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

13th day of September, 1978

J. P. Washburn

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

**September 13, 1978**

**Arthur Stahl  
216 Sycamore Street  
West Hempstead, New York**

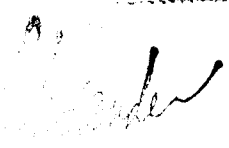
**Dear Mr. Stahl:**

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 ~~478~~ **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 OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
ARTHUR STAHL	:	DECISION
for a Hearing to Review a Determination	:	
under Article 20 of the Tax Law for the	:	
Year 1974.	:	

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Applicant, Arthur Stahl, 216 Sycamore Street, West Hempstead, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the Year 1974 (File No. 16410).

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, on February 17, 1978 at 12:05 P.M. Applicant appeared by Harry Greenbaum, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

#### ISSUE

Whether the penalty imposed on applicant of \$9,850.00, pursuant to section 481.1(b) of the Tax Law for cigarettes not bearing a New York cigarette tax stamp in the possession or under the control of applicant, should be reduced.

FINDINGS OF FACT

1. Applicant, Arthur Stahl, was issued a Notice of Determination of Tax Due under the Cigarette Tax Law (Article 20, subdivision 1(b) of section 481) on August 6, 1974. Said Notice provided that 207 cartons of cigarettes were seized on May 28, 1974, of which 197 cartons were subject to a penalty of \$50.00 per carton, for a total penalty of \$9,850.00.

2. Applicant concedes and stipulates that the figure of 197 cartons is correct, that said cigarettes did not contain a New York State cigarette tax stamp, that he knew this to be so, and that the cigarettes seized on May 28, 1974 were under his control at his residence at 216 Sycamore Street, West Hempstead, Long Island.

3. Applicant, Arthur Stahl, is 62 years of age and is employed by the New York Mercantile Exchange in Manhattan as a clerk. He earns \$265.00 per week.

4. For a period of approximately nine months, applicant purchased cartons of cigarettes from one "Tootsie" in a parking lot in Sheepshead Bay, Brooklyn, New York, either once or twice a month. The purchase price was \$3.00 per carton paid in cash. Initially, applicant purchased four or five cartons for himself. Subsequently, co-workers and "bosses" requested that he purchase cigarettes for them. Consequently, applicant was regularly buying 35 to 40 cartons from Tootsie at least once or twice a month. Applicant would buy from one to four cartons of cigarettes for 14 or 15 people.

5. Applicant would pay for the cigarettes with his own money and be paid in return by the people for whom he bought them. Tootsie advised applicant that he believed he was under surveillance and that he would have many more cartons available at their next meeting, in approximately one month. Applicant advised Tootsie that he would like to purchase a large amount. At that next meeting, applicant purchased the cartons which were seized on May 28, 1974.

6. Applicant had approximately \$200.00 in a savings bank. Yet on his last meeting with Tootsie, applicant purchased in excess of 200 cartons of cigarettes and paid approximately \$600.00 in cash therefor.

7. Applicant testified that he neither resold the cigarettes at a profit, nor received a commission from Tootsie.

8. Applicant paid a fifty-dollar fine in relation to the cigarette seizure in a New York criminal court, but the judgement resulting in the fine was not known to applicant. After the cigarettes were seized, applicant cooperated fully with the State investigators.

9. This is the first penalty pursuant to Article 20 of the Tax Law imposed on applicant.

#### CONCLUSIONS OF LAW

A. That applicant, Arthur Stahl, was in possession or had under his control 207 cartons of cigarettes not bearing New York cigarette tax stamps on May 28, 1974.

B. That pursuant to 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 in packages not bearing New York cigarette tax stamps in excess of 2,000 such cigarettes, in the possession or under the control of any person.

C. That the State Tax Commission, in its discretion, may remit all or part of the penalty imposed under section 481.1(b).

D. That based on the Findings of Fact above, applicant, Arthur Stahl, though acting with knowledge and continuity, did cooperate at and after the seizure and was not such a principal in the trafficking of cigarettes not bearing New York tax stamps to warrant a penalty to the degree imposed by the notice of August 6, 1974, and that such penalty is reduced to five dollars per carton or a total of \$985.00.

E. That except as provided in Conclusion of Law "D", above, the application of Arthur Stahl is denied and the Notice of Determination issued August 6, 1974 is sustained.

DATED: Albany, New York  
September 13, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER