

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition .

of

CHARLES TRUPIA

AFFIDAVIT OF MAILING

For a ~~Redetermination of a Deficiency~~ :
~~Revision of a Determination~~ :
Hearing to Review a Determination :
~~xxxx~~ under Article (x) 20 of the :
Tax Law for the Year (xxxxxx) 1976. :

State of New York
County of Albany

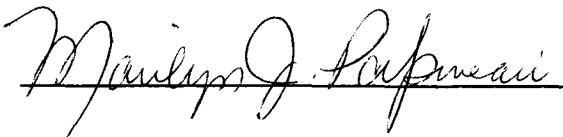
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of March , 1979 , he served the within
Notice of Decision by (certified) mail upon Charles Trupia
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Charles Trupia
57 East Stroud Avenue
Staten Island, New York

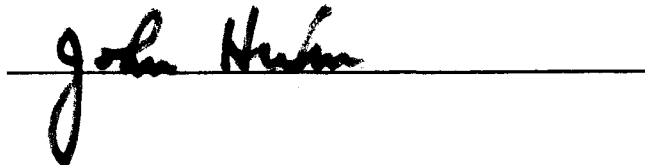
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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.







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. Charles Trupia
57 East Stroud Avenue
Staten Island, New York


Dear Mr. Trupia:

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 **(a) 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

In the Matter of the Application :
of :
CHARLES TRUPIA : DECISION
for a Hearing to Review a Determination :
under Article 20 of the Tax Law for the :
Year 1976. :
:

Applicant, Charles Trupia, 57 East Stroud Avenue, Staten Island, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1976 (File No. 18788).

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 May 17, 1978 at 10:45 A.M. Applicant appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

Whether the penalty of \$10.00 per carton imposed (pursuant to section 481.1(b) of the Tax Law) on applicant for possession of or control over unstamped cigarettes was proper.

FINDINGS OF FACT

1. The Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due Under Cigarette Tax Law on March 10, 1977

to applicant, Charles Trupia, asserting a penalty of \$10.00 per carton for a total of \$3,000.00. This was based on a November 8, 1976 seizure of 310 cartons of unstamped cigarettes.

2. An investigator employed by the Department of Taxation and Finance obtained a search warrant and on November 8, 1976, proceeded to the residence of applicant at 57 East Stroud Avenue, Staten Island, New York. There he found applicant seated in his automobile, which vehicle, the investigator testified, was named in the search warrant.

3. The investigator advised applicant that he was in possession of a search warrant. The trunk of applicant's automobile was then opened, revealing a number of cartons of cigarettes bearing only North Carolina tax stamps.

4. Applicant's car was then driven to Two World Trade Center, New York, New York, where the seized cigarettes were unloaded and a receipt was obtained from the property clerk for 310 cartons of cigarettes bearing North Carolina tax stamps.

5. Applicant was taken to the Saint George Police Station on Staten Island and was charged with a violation of section 481(2) of the Tax Law. He subsequently paid a fine of approximately \$250.00 to \$300.00, after pleading guilty to a misdemeanor.

6. Applicant specifically purchased the cigarettes in question for the purpose of sale with the intent of profitting thereby, based on the absence of New York tax stamps.

7. On an occasion eight or nine years earlier, applicant had also been fined for a violation of Article 20 of the Tax Law. Applicant further admits to a continued record of difficulty with the law.

8. Five years ago, applicant, who suffers from diabetes, had a heart attack. He is presently unemployed, has authorization for temporary Medicaid and is attempting to get social security disability payments.

CONCLUSIONS OF LAW

A. That applicant, Charles Trupia, was in possession of or had under his control on November 8, 1976, 310 cartons of cigarettes, and that the packs of cigarettes contained therein did not contain New York tax stamps.

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 unstamped packages in excess of 2,000 such cigarettes in the possession or under the control of any person, and that discretion exists for the Commission to remit all or part of said penalty.

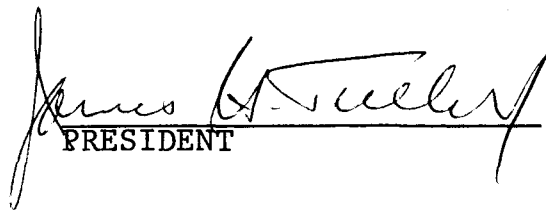
C. That based on the fact that applicant had knowingly trafficked in the sale of cigarettes lacking New York State tax stamps and that this is not the first instance of such activity, the penalty of \$10.00 per carton asserted in the Notice is not unreasonable, nor should discretion be exercised to remit all or part thereof.

D. That the application of Charles Trupia is denied and the Notice of Determination of Tax Due dated March 10, 1977 is sustained.

DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER