

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Patsy Bottega :
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 Period :
4/5/79.

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 November, 1981, he served the within notice of Decision by certified mail upon Patsy Bottega, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

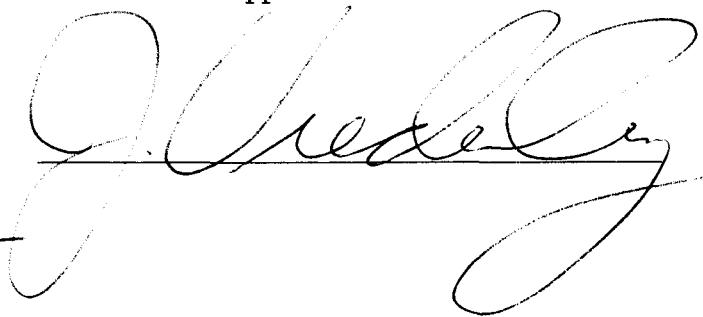
Patsy Bottega
923 E. 31st St.
Brooklyn, NY 11210

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
27th day of November, 1981.


Patsy Bottega


Jay Vredenburg

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

November 27, 1981

Patsy Bottega
923 E. 31st St.
Brooklyn, NY 11210

Dear Mr. Bottega:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PATSY BOTTEGA : DECISION
for a Hearing to Review a Determination under :
Article 20 of the Tax Law for the Period :
April 5, 1979. :

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 3, 1981 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq., (Patricia Brumbaugh, Esq., of counsel).

Whether the penalty of \$600.00 imposed against petitioner was reasonable and proper under Article 20 of the Tax Law.

1. Petitioner, Patsy Bottega, was issued a Notice of Determination of Tax Due under the Cigarette Tax Law (Article 20, Section 481-b) on November 8, 1979. Said Notice provided that 125 cartons of cigarettes seized on April 5, 1979 were subject to penalty: 100 cartons at \$5.00 per carton and 25 cartons at \$4.00 per carton, for a total penalty of \$600.00.

2. On April 5, 1979 pursuant to a search warrant, petitioner's car was found to contain eighty cartons of untaxed cigarettes. Thereupon Patsy Bottega was arrested. A companion was also arrested with forty-five cartons of untaxed cigarettes in his car. Both cars and the untaxed cigarettes were seized by the arresting officer.

3. Petitioner Patsy Bottega admitted that he had in his possession untaxed cartons of cigarettes. He disputed the amount of cartons seized.

CONCLUSIONS OF LAW

A. That Patsy Bottega was in possession of 80 cartons of cigarettes not bearing New York cigarette tax stamps on April 5, 1979.

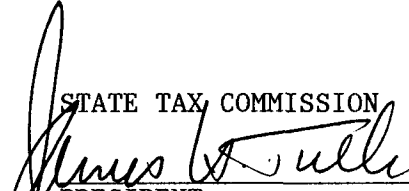
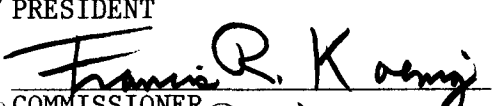

B. That, pursuant to section 481.1(b) of the Tax Law, the State Tax Commission may impose a penalty of not more than \$100.00 for each 200 cigarettes or fraction thereof in excess of 2,000 cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person. The Commission, in its discretion, may remit such penalty in whole or in part.

C. That the penalty imposed by the Audit Division pursuant to section 481.1(b) of the Tax Law is reduced to \$350.00 (80 cartons less 10 cartons at \$5.00 per carton).

D. That the petition of Patsy Bottega is granted to the extent indicated in Conclusion of Law "C"; that the Notice of Determination of Tax Due November 8, 1979 is to be modified accordingly; and that except as so modified the determination is sustained.

DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER