

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Benny Cacciabaudo :
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 Year 1975. :

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 11th day of April, 1980, he served the within notice of Determination by mail upon Benny Cacciabaudo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

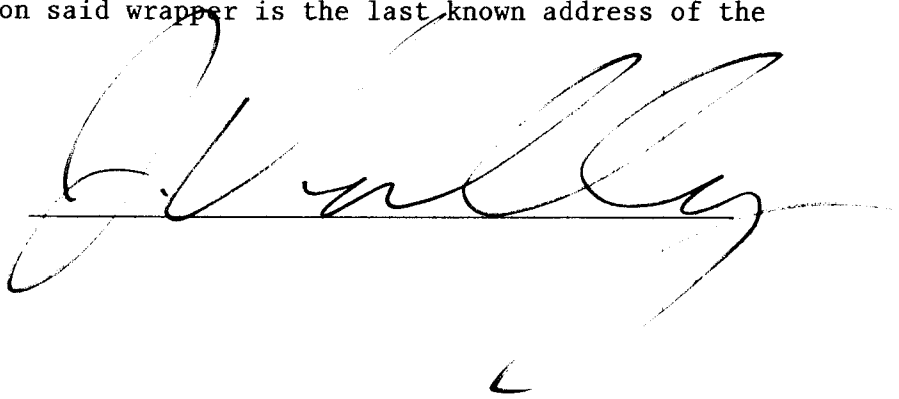
Benny Cacciabaudo
83-05 98th St.
Woodhaven, NY

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
11th day of April, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Benny Cacciabauda :
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 Year 1975. :

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 11th day of April, 1980, he served the within notice of Determination by mail upon Bernard Udell 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. Bernard Udell
50 Court St.
Brooklyn, NY 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
11th day of April, 1980.

Joanne Knapp

Jay Vredenburg

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

April 11, 1980

Benny Cacciabauda
83-05 98th St.
Woodhaven, NY

Dear Mr. Cacciabauda:

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:

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
Bernard Udell
50 Court St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|---------------|
| In the Matter of the Application | : | |
| of | : | |
| BENNY CACCIABAUDO | : | DETERMINATION |
| for a Hearing to Review a Determination under | : | |
| Article 20 of the Tax Law for the Year 1975 | : | |

Applicant, Benny Cacciabauda, 83-05 98th Street, Woodhaven, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1975 (File No. 18951).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 15, 1978 at 9:15 A.M. Applicant appeared by Bernard Udell, Esq. The Audit Division appeared by Peter Crotty, Esq. (Lawrence Stevens, Esq. of counsel).

ISSUE

Whether the penalty of \$18,460.00 imposed against applicant for unlawful possession of unstamped cigarettes was proper.

FINDINGS OF FACT

1. On May 13, 1975, applicant, Benny Cacciabauda, was arrested by a New York City police patrolman while at the wheel of a van at 124 Walworth Street, Brooklyn, New York. The van was found to contain 8,940 cartons of cigarettes bearing North Carolina tax stamps.
2. The cigarettes seized bore no New York State tax stamps.
3. On March 30, 1977, the Audit Division issued a Notice of Determination of Tax Due under (Article 20, section 481.1(b)) of the Cigarette Tax Law,

against applicant, imposing a penalty of \$4.00 per carton on 300 cartons of cigarettes, and \$2.00 per carton on 8,630 cartons of cigarettes, for an amount allegedly due of \$18,460.00.

4. On June 2, 1977, applicant timely applied for a hearing to review the determination.

5. On June 13, 1976, applicant pled "Guilty" in the Supreme Court of the State of New York, County of Kings, to a misdemeanor for "Possession Untaxed Cigarettes" before Justice Gerald S. Held.

6. Other than applicant's admission that he was driving a van containing an unspecified number of cartons of cigarettes, plus the statement on the Notice of Determination that 8,930 cartons of unstamped cigarettes had been seized on May 12, 1975, no evidence was adduced at the hearing to establish applicant's possession of any specific number of cartons of unstamped cigarettes.

CONCLUSIONS OF LAW

A. That under section 481.1(b) of the Tax Law, the State Tax Commission may impose a penalty of not more than \$100.00 for each carton or fraction thereof in excess of ten cartons of cigarettes in unstamped or unlawfully stamped packages in the possession of or under the control of any person. The Commission, in its discretion, may remit all or part of such penalty.

B. That by his plea of guilty to misdemeanor charges of possession of untaxed cigarettes, applicant, Benny Cacciabauda, admitted possession of a quantity of cigarettes of less than 100 cartons (section 481.2 of the Tax Law).

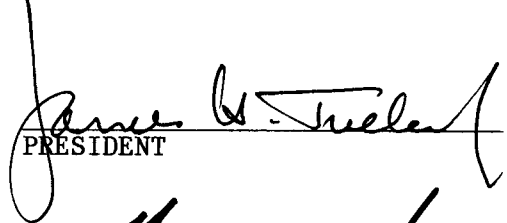
C. That under the facts of this case, petitioner will be deemed to have been in possession of or had under his control 99 cartons of cigarettes in unstamped or unlawfully stamped packages and the penalty for each carton shall be \$5.00.

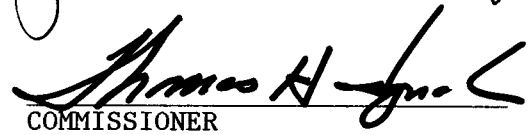
D. That the application of Benny Cacciabaudo is granted to the extent that the penalty is reduced from \$18,460.00 to \$495.00, and is, in all other respects denied.

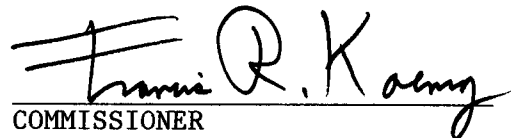
DATED: Albany, New York

APR 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER