

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Emanuel DiMaggio :

: 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 Year 1977. :

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 5th day of June, 1981, he served the within notice of Decision by mail upon Emanuel DiMaggio, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Emanuel DiMaggio  
39 Paerdaget 12th St.  
Brooklyn, NY 11236

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  
5th day of June, 1981.

*Annie P. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Emanuel DiMaggio :

: 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 Year 1977 :

---

State of New York  
County of Albany

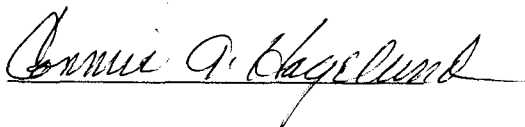
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of June, 1981, he served the within notice of Decision by mail upon Eugene F. Mastropieri the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

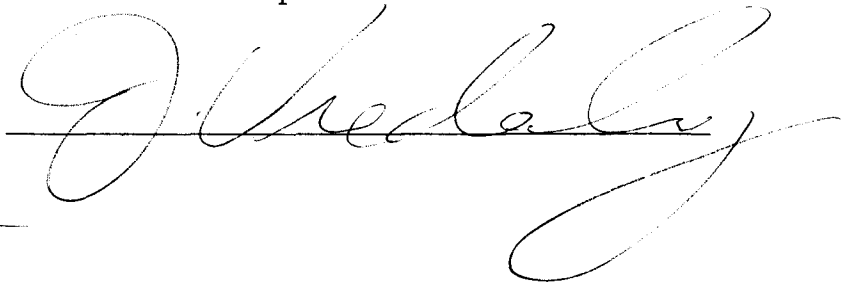
Mr. Eugene F. Mastropieri  
67-40 Myrtle Ave.  
Glendale, NY 11227

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  
5th day of June, 1981.





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

June 5, 1981

Emanuel DiMaggio  
39 Paerdaget 12th St.  
Brooklyn, NY 11236

Dear Mr. DiMaggio:

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  
Eugene F. Mastropieri  
67-40 Myrtle Ave.  
Glendale, NY 11227  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
EMANUEL DI MAGGIO	:	DECISION
for a Hearing to Review a Determination	:	
of Cigarette Tax under Article 20 of the	:	
Tax Law for the Year 1977.	:	

---

Petitioner, Emanuel DiMaggio, 39 Paerdaet 12th Street, Brooklyn, New York 11236, filed a petition for a hearing to review a determination of cigarette tax under Article 20 of the Tax Law for the year 1977 (File No. 19769).

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 May 10, 1979 at 9:15 A.M. and thereafter was continued before Edward Goodell, Hearing Officer, at the same place on June 27, 1979 at 9:15 A.M. Petitioner appeared pro se on May 10, 1979 and by Eugene F. Mastropieri, Esq., on June 27, 1979. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz and Bruce M. Zalaman, Esqs., of counsel).

ISSUE

Whether the penalty of \$896.00 imposed on petitioner for unlawful possession of 194 cartons of unstamped cigarettes was proper.

FINDINGS OF FACT

1. On March 30, 1977, the Audit Division issued a Notice of Determination of Tax Due Under Cigarette Tax Law against petitioner, Emanuel DiMaggio, asserting a total penalty of \$876.00 based on 194 "cartons of cigarettes seized 2/4/77 subject to penalty".

2. On February 4, 1977, the petitioner, Emanuel DiMaggio, was arrested by an Excise Tax Investigator of the New York State Department of Taxation and Finance on the street in front of 39 Paerdaget 12th Street, Brooklyn, New York and was charged with having in his possession at that time and place ten untaxed cartons of cigarettes.

3. The circumstances leading to said arrest and charge are as follows:

(a) The petitioner and his wife, Renee DiMaggio, occupied on February 4, 1977, a bi-level apartment in the building located at 39 Paerdaget 12th Street, Brooklyn, New York. The entrance to said building is about a half story above the street level and is reached by a stairway from the street.

(b) At about 10:30 on the morning of February 4, 1977, the petitioner's said wife, while standing at the said entrance, threw a package to the petitioner who was then standing on the street at the foot of the said stairway leading to the said entrance. The petitioner caught the said package and proceeded to put it into the trunk compartment of an automobile parked on the sidewalk in front of the said building located at 39 Paerdaget 12th Street, Brooklyn, New York.

(c) The aforesaid package contained six cartons of untaxed cigarettes and, in addition, there were in the trunk compartment of the aforesaid automobile at the time the petitioner was placing the aforesaid package in said trunk compartment, two more cartons of untaxed cigarettes.

(d) While the petitioner, who did not have a license as a cigarette dealer, was being arrested as aforesaid, a second package containing two cartons of cigarettes "were passed out" from the aforesaid building at 39 Paerdaget 12th Street, Brooklyn, New York by "an unknown party" to the petitioner's said wife, Renee DiMaggio, who was also then and there placed under arrest by an Excise Tax Investigator of the New York State Department of Taxation and Finance.