

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Rocco Fallacara :

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 1978. :

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 17th day of October, 1980, he served the within notice of Decision by mail upon Rocco Fallacara, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rocco Fallacara
91-22 86th Ave.
Ozone Park, NY 11421

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
17th day of October, 1980.

Dorothy A. Bank

Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ROCCO FALLACARA
for Revision of a Determination or for
Refund of Cigarette Tax under Article 20
of the Tax Law for the Year 1978.

DECISION

Petitioner, Rocco Fallacara, 91-22 86th Avenue, Ozone Park, New York 11421, filed a petition for revision of a determination or for refund of cigarette tax under Article 20 of the Tax Law for the year 1978 (File No. 27523).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 17, 1980 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the penalty of \$620.00 imposed on petitioner for the unlawful possession of unstamped cigarettes should be reduced.

FINDINGS OF FACT

1. On August 21, 1979, the Audit Division issued a Notice of Determination of Tax Due Under Cigarette Tax Law (Article 20) stating:

"Cartons of cigarettes seized 2/16/78 subject to penalty	130 cartons
Penalty per carton: 100 cartons @ \$5.00	\$500.00
30 cartons @ \$4.00	120.00
Total penalty	\$620.00"

2. The tax determination was based on a seizure of 140 cartons of cigarettes bearing North Carolina tax stamps from petitioner, Rocco Fallacara, 91-22 86th Avenue, Ozone Park, New York. The cigarettes did not bear New York tax stamps.

The seizure took place at East 84th Street and Avenue "J", Brooklyn, New York, by the New York State Department of Taxation and Finance, Special Investigations Bureau.

3. On March 15, 1978, the petitioner pleaded guilty in Criminal Court, Kings County, before Mathews, J., to the criminal charge of the unlawful possession of unstamped cigarettes and was sentenced to a fine of \$100.00 or 30 days. The petitioner paid the fine on April 12, 1978.

4. At the formal hearing herein, the petitioner admitted the possession of the cigarettes and further testified, in effect, that his only reason for filing the petition was to have the tax penalty reduced and to also make arrangements for paying same.

CONCLUSIONS OF LAW

A. That section 481.1(b) of the Tax Law provides in part as follows:

"(b)...the tax commission may impose a penalty of not more than one hundred dollars for each two hundred cigarettes or fraction thereof in excess of two thousand cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person... The tax commission...may remit all or part of such penalty..."

B. That petitioner was in possession or control of 140 cartons of cigarettes in unstamped or unlawfully stamped packages. Under section 481.1(b) of the Tax Law, the penalty imposed against petitioner could have been as much as \$13,000.00 rather than the \$620.00 imposed by the Audit Division.

C. That the petitioner failed to provide any extenuating circumstances for reducing the penalty; therefore the petition of Rocco Fallacara is in all respects denied and Determination No. 3396 dated August 21, 1979 is sustained.

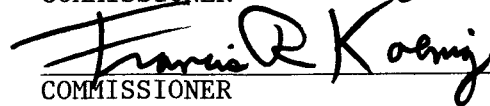
DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER