

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Joseph Gama

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 1974. :

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 22nd day of February, 1980, he served the within notice of Decision by mail upon Joseph Gama, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

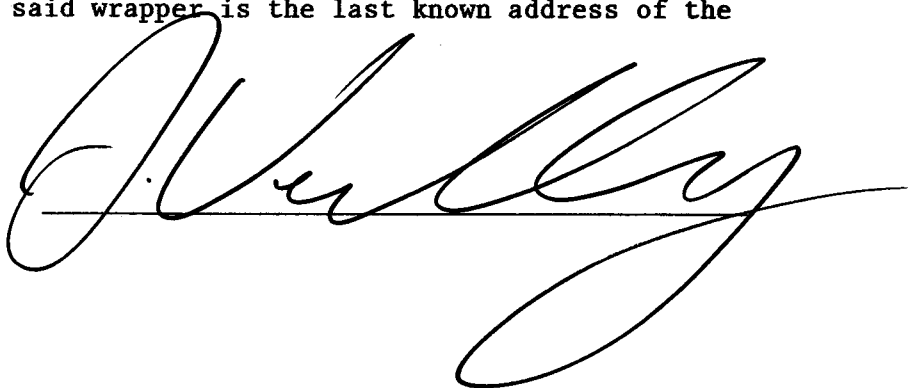
Joseph Gama
80 Sudbury Dr.
Yonkers, NY 10710

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
22nd day of February, 1980.

Joanne Krapp



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

February 22, 1980

Joseph Gama
80 Sudbury Dr.
Yonkers, NY 10710

Dear Mr. Gama:

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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
JOSEPH GAMA : DECISION
for a Hearing to Review a Determination :
under Article 20 of the Tax Law for the :
Year 1974. :

Applicant, Joseph Gama, 80 Sudbury Drive, Yonkers, New York 10710, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1974 (File No. 19276).

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 June 20, 1978 at 9:40 A.M. Applicant appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

Whether the penalty of \$6,118.00 imposed against applicant for unlawful possession of unstamped cigarettes was proper.

FINDINGS OF FACT

1. Applicant, Joseph Gama, was never granted a wholesale dealer's license to sell cigarettes.
2. On August 27, 1974, applicant was arrested at the entrance to the garage of his residence at 80 Sudbury Drive, Yonkers, New York. Department of Taxation and Finance agents found and seized 2,769 cartons of unstamped cigarettes in applicant's garage.

3. On January 18, 1978, applicant pleaded guilty in Westchester County Court to felonious possession of unstamped cigarettes under section 481(2) of the Tax Law, a class "A" misdemeanor. The court fined applicant \$500.00 and five years probation.

4. On June 1, 1977, the Audit Division issued a Notice of Determination of Tax Due under Cigarette Tax Law, Article 20, section 481.1(b) against applicant, imposing a penalty of \$4.00 per carton on 300 cartons and \$2.00 per carton on 2,459 cartons of unstamped cigarettes found in his possession and under his control on August 27, 1974.

5. Applicant timely applied for a hearing to review said determination.

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 200 cigarettes found in unstamped packages in excess of 2,000 such cigarettes, when in the possession or under the control of any person; therefore, the penalty imposed against applicant could have been as much as \$100.00 per carton, or a total of \$275,900.00.

B. That the penalty of \$6,118.00 imposed on applicant, Joseph Gama, for unlawful possession of unstamped cigarettes on August 27, 1974 was proper.

C. That the application of Joseph Gama is denied and the Notice of Determination of Tax Due dated June 1, 1977 is sustained.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER