

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

August 6, 1980

Frank Grande
35-49 Twelfth Ave.
Brooklyn, NY 11218

Dear Mr. Grande:

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 Petition | : | |
| of | : | |
| FRANK GRANDE | : | DECISION |
| for a Hearing to Review a Determination | : | |
| under Article 20 of the Tax Law for the | : | |
| Year 1973. | : | |

Petitioner, Frank Grande, 35-49 Twelfth Avenue, Brooklyn, New York 11218, filed a petition for a hearing to review a determination under Article 20 of the Tax Law for the year 1973 (File No. 18954).

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 February 14, 1978 at 2:00 P.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

Whether the determination of penalty due issued against petitioner for unlawful possession and transportation of unstamped cigarettes, in the amount of \$100.00 per carton for a total penalty of \$549,100.00 should be sustained.

FINDINGS OF FACT

1. On April 11, 1974, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due under the Cigarette Tax Law to petitioner, Frank Grande, imposing a penalty of \$100.00 per carton on 5,491 cartons of cigarettes out of 5,501 cartons of cigarettes (200 cigarettes per carton) seized on November 28, 1973, for a total of \$549,100.00.

2. According to his own admissions, petitioner received a fee of \$200.00 from a man he knew as "Joe", for driving a van to North Carolina for the

purpose of picking up cigarettes and returning with them to New York. He did not count the cigarettes nor assist with loading them into the van.

3. Petitioner was arrested and the vanload of cigarettes seized on November 28, 1973 in New York City. The Receipt by the Property Clerk, Special Investigations Bureau of the Department of Taxation and Finance, indicates that 5,501 cartons of cigarettes bearing North Carolina stamps were seized by Investigator Meenaghan.

4. On February 14, 1974, petitioner entered a plea of guilty in the Criminal Court of the City of New York to violation of section 481.2 of Article 20 of the Tax Law and was sentenced to pay a fine of \$500.00 or to be imprisoned for a period of 60 days. Petitioner paid the fine in full on that date.

5. Petitioner had never been implicated in any previous incident involving unstamped cigarettes.

6. At the time of entering his plea, petitioner was unaware that in addition to the above mentioned criminal disposition, a penalty could also be imposed upon him by the State Tax Commission.

CONCLUSIONS OF LAW

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

"In addition to any other penalty imposed by this article, 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."

Thus, the maximum allowable penalty was imposed upon petitioner.

B. That the State Tax Commission may, in its discretion, remit all or part of the penalty imposed under section 481.1(b).

C. That petitioner, though acting with knowledge, was not such a principal in the trafficking of cigarettes not bearing New York tax stamps to warrant a penalty to the degree imposed by the Notice of April 11, 1974. Such penalty

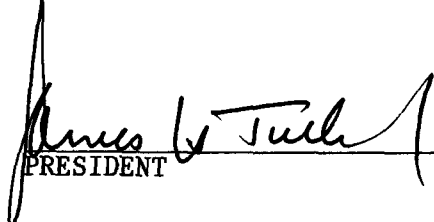
is therefore reduced to \$4.00 per carton for the first 300 cartons and to \$2.00 per carton for the remaining 5,191 cartons, for a total penalty of \$11,582.00.

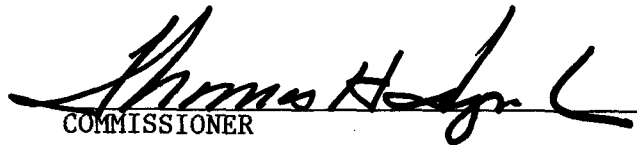
D. That, except as provided in Conclusion of Law "C", above, the petition of Frank Grande is hereby denied and the Notice of Determination issued April 11, 1974 is sustained.

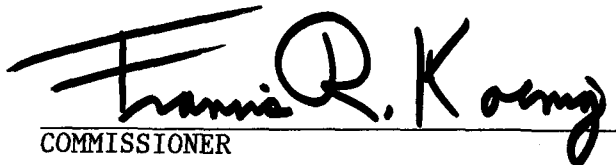
DATED: Albany, New York

AUG 06 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Tax Commission
TAX APPEALS BUREAU

State Campus
Albany, New York 12227

John J. Sollecito, Director
(518) 467-1723

November 23, 1984

Walter Howard
6 Birmingham Dr.
Englishtown, NJ 07726

Dear Mr. Howard:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 478 of the Tax Law, any proceeding in court to review this decision must be commenced 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Building 9, State Campus, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Very truly yours,

JOHN E. SKORENSKI
SUPERVISOR OF CALENDAR UNIT

cc: Petitioner's Representative
Carmin J. Perrotta
Suite 1960, 100 Church St
New York, NY 10007
Taxing Bureau's Representative