

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

William Katz :

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 . :

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 William Katz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Katz
141-17 70 Rd.
Queens, 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
22nd day of February, 1980.

Joanne Knapp



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

February 22, 1980

William Katz
141-17 70 Rd.
Queens, NY

Dear Mr. Katz:

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	:	
	:	
WILLIAM KATZ	:	DECISION
	:	
for a Hearing to Review a Determination	:	
under Article 20 of the Tax Law.	:	

Applicant, William Katz, 141-17 70th Road, Queens, New York, filed an application to review a determination under Article 20 of the Tax Law (File No. 13516).

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 October 18, 1977 at 9:15 A.M., and was continued on May 16, 1978 at 2:45 P.M. and on July 10, 1978 at 1:00 P.M., before Harvey B. Baum, Hearing Officer. Petitioner appeared pro se on the first two dates, but failed to appear on July 10, 1978. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron and Laurence Stevens, Esqs., of counsel).

ISSUE

Whether petitioner was in possession of unstamped cigarettes and therefore liable for penalties thereon under section 481.1(b) of the Tax Law.

FINDINGS OF FACT

1. On October 10, 1973, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due under Cigarette Tax Law (Article 20, section 481.1(b) of the Tax Law), against applicant, William Katz, and/or certain other individuals, imposing penalties of \$100 per carton on 10,144 of 10,154 cartons seized on March 29, 1973, for a total penalty of \$1,014,400.00.

2. Applicant appeared at the first two sessions of the formal hearing. The first session was adjourned pending the appeal of a related criminal

matter. The second session was adjourned so that applicant could obtain counsel to represent him at the hearing. On July 10, 1978 applicant failed to appear; accordingly, no evidence was presented on his behalf. The Miscellaneous Tax Bureau presented its prima facie case through the testimony of New York City Police Officer Thomas Bertolino.

3. In March 1973, officers of the New York City Police Department (including Officer Thomas Bertolino) set up surveillance of a public parking garage located at 193 Lawrence Avenue, Brooklyn, New York. During the surveillance, Officer Bertolino observed petitioner, who was apparently employed by said garage, parking vehicles there and removing them therefrom. Based on these observations, a search warrant was obtained. The warrant was executed on March 29, 1973 at 9:30 A.M. The officers searched the premises, found petitioner and other persons inside, and further found a total of 10,154 cartons of cigarettes which did not bear valid New York State tax stamps, but did bear North Carolina tax stamps. Petitioner, along with the other persons found on the premises, was arrested for felonious possession of unstamped and untaxed cigarettes. (Section 481.2 of the Tax Law provides that any person who possesses 20,000 or more cigarettes [i.e., 100 or more cartons] in unstamped or unlawfully stamped packages is guilty of a Class E felony.) Petitioner was convicted, given a three-week sentence and a \$2,000.00 fine. The conviction was affirmed by the Appellate Division. Leave to appeal to the New York State Court of Appeals was denied.

CONCLUSIONS OF LAW

A. That the criminal conviction against petitioner for possession of unstamped cigarettes (the possession of which in the quantity found is a Class E felony under section 481.2 of the Tax Law), together with the uncontradicted hearing testimony of Police Officer Thomas Bertolino supports the

conclusion that petitioner was in possession or control of 10,154 cartons of unstamped cigarettes within the meaning of section 481.1(b) of the Tax Law.

B. That the State Tax Commission may impose a penalty of not more than \$100.00 for each carton of cigarettes in excess of ten cartons in unstamped or unlawfully stamped packages in the possession or under the control of any person. The Commission, in its discretion, may remit all or part of such penalty and hereby reduces said penalty to the following:

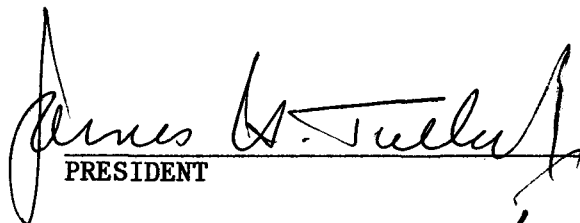
300 cartons @ \$4.00 per carton =	\$ 1,200.00
9,844 cartons @ \$2.00 per carton =	<u>19,688.00</u>
Total	<u>\$20,888.00</u>

C. That the Notice of Determination of Tax Due under Cigarette Tax Law issued October 10, 1973, reduced to \$20,888.00 by Conclusion of Law "B", is sustained. Except for said reduction, the application of William Katz is denied.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER