

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Anthony Mantia :

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 1975. :

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 14th day of October, 1980, he served the within notice of Decision by mail upon Anthony Mantia, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony Mantia
1101-65th St.
Brooklyn, NY 11219

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
14th day of October, 1980.

Dorothy A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Anthony Mantia :

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 1975. :

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 14th day of October, 1980, he served the within notice of Decision by mail upon Marie Mantia the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Marie Mantia
1101 65th St.
Brooklyn, 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 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
14th day of October, 1980.

Deborah A. Bant

J. Vredenburg

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

January 18, 1980

Anthony Mantia
1101-65th St.
Brooklyn, NY 11219

Dear Mr. Mantia:

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
Marie Mantia
1101 65th St.
Brooklyn, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ANTHONY MANTIA	:	DECISION
for a Hearing to Review a Determination of	:	
Cigarette Tax under Article 20 of the Tax	:	
Law for the Year 1975.	:	

Petitioner, Anthony Mantia, 1101-65th Street, Brooklyn, New York, filed a petition for a hearing to review a determination under Article 20 of the Tax Law (File No. 22977).

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 17, 1979, and was continued on February 20, 1980 before Stanley Buchsbaum, Hearing Officer. Petitioner appeared by Marie Mantia at both hearings. The Audit Division appeared by Peter Crotty, Esq. at the first hearing and by Ralph J. Vecchio, Esq. at the second (Frank Levitt, Esq., of counsel).

ISSUE

Whether the penalty imposed on petitioner for unlawful possession of unstamped cigarettes was proper.

FINDINGS OF FACT

1. On August 20, 1975, petitioner, Anthony Mantia, and his cousin, Thomas Anacito, were observed by agents of the Special Investigations Bureau unloading what appeared to be cartons of cigarettes from an automobile and carrying them into a house at 4424 17th Avenue in Brooklyn. After petitioner and Anacito finished unloading the car, they drove it to 1475 Dahill Road and loaded it again at a garage at the rear of that location. The agents remained

at the Dahill Road location and saw the two men return twice that same day and reload the car. The agents then obtained a search warrant in Criminal Court, Kings County, which authorized a search of the Dahill Road premises and the automobile. On August 27, 1975, the agents had the premises under surveillance and observed petitioner and Anacito arrive in an automobile. Just after their arrival, one Thomas Aspimonti arrived in a panel truck and backed it into the driveway and all the way to the garage located at the end of the driveway. Petitioner, Anacito, and Aspimonti then started to unload the truck into the garage. At this point, the agents exercised the search warrant and found that the packages contained cigarettes without New York tax stamps. The three individuals were placed under arrest and 3,219 cartons of cigarettes were seized by the agents. The cigarettes did not bear New York tax stamps.

2. On March 15, 1977, petitioner was convicted of the crime of "Unlawful possession, transportation for the purpose of sale of unstamped cigarettes", a felony, and was sentenced to a conditional discharge.

3. Petitioner testified that he was not paid for helping to transport the cigarettes and that he had merely asked his cousin, Anacito, if he could take a ride with him "to kill a couple of hours".

4. Applicant was never granted a license to sell cigarettes as a wholesale dealer.

5. On September 16, 1977, the Miscellaneous Tax Bureau issued a Notice of Determination of tax due under section 481.1(b) of the Tax Law against petitioner. The notice imposed a penalty of \$4.00 per carton on 300 cartons, and \$2.00 per carton for 2,909 cartons of the cigarettes seized on August 27, 1975. The penalty was based on 200 cigarettes per carton and the total penalty imposed was \$7,018.00.

6. Shortly after his arrest, petitioner obtained a legitimate job and was still employed at the time of the formal hearing. He has apparently been in no conflict with the law since the arrest.

CONCLUSIONS OF LAW

A. That on August 27, 1975, petitioner, Anthony Mantia, had in his possession or control, 3,219 cartons of cigarettes in unstamped or unlawfully stamped packages.

B. 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 or fraction thereof in excess of 2,000 cigarettes 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.

C. That the penalty imposed against petitioner was proper and should not be reduced. It is noted that under the law, the penalty could have been as high as \$320,900.00.

D. That the petition of Anthony Mantia is denied and the Notice of Determination of tax due is sustained.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

1. The first part of the report is a summary of the work done during the year.

2. The second part is a detailed account of the work done during the year.

3. The third part is a summary of the work done during the year.

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John H. [illegible]
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6. Shortly after his arrest, petitioner obtained a legislative job and was still employed at the time of the formal hearing. He has apparently been in no conflict with the law since the arrest.

PROVISIONS OF LAW

A. That on August 27, 1975, petitioner, Anthony Martin, had in his possession or control, 3,219 cartons of cigarettes in unstamped or unstamped packages,

B. 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 or fraction thereof in excess of 2,000 cigarettes in unstamped or unstamped packages in the possession or under the control of any person. The Commission, in its discretion, may remit all or part of such penalty.

C. That the penalty imposed against petitioner was proper and should not be reduced. It is noted that under the law, the penalty could have been as high as \$320,900.00.

D. That the petition of Anthony Martin is denied and the Notice of Determination of tax due is sustained.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

7. Shortly after the arrest, petitioner obtained a job and was still employed at the time of the fourth hearing. He has apparently been

in contact with the law since the arrest.

CONCLUSIONS OF LAW

1. That on August 27, 1975, petitioner, Anthony Martin, was in the possession of control of a certain amount of money in the amount of \$100.00.

2. That the money was obtained from the State Tax Commission, which had issued a check for \$100.00 to petitioner on August 27, 1975.

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12. That the money was obtained from the State Tax Commission, which had issued a check for \$100.00 to petitioner on August 27, 1975. The money was obtained from the State Tax Commission, which had issued a check for \$100.00 to petitioner on August 27, 1975.

Robert W. Smith
James K. Smith
James K. Smith

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