

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Seymour & Marilyn Singer :  
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 1976. :

AFFIDAVIT OF MAILING

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 23rd day of May, 1980, he served the within notice of Decision by mail upon Seymour & Marilyn Singer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour & Marilyn Singer  
4550 New York Ave.  
Island Park, 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  
23rd day of May, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Seymour & Marilyn Singer :  
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for Redetermination of a Deficiency or a Revision :  
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Cigarette Tax :  
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for the Year 1976. :

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 23rd day of May, 1980, he served the within notice of Decision by mail upon Martin Stewart the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Martin Stewart  
10 E. 40th St.  
New York, NY 10016

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  
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Seymour & Marilyn Singer  
4550 New York Ave.  
Island Park, NY

Dear Mr. & Mrs. Singer:

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  
Martin Stewart  
10 E. 40th St.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
SEYMOUR SINGER and MARILYN SINGER	:	DECISION
	:	
for a Hearing to Review a Determination	:	
under Article 20 of the Tax Law for the	:	
Year 1976.	:	

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Applicants, Seymour Singer and Marilyn Singer, 4550 New York Avenue, Island Park, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the year 1976 (File Nos. 20269 and 20270).

A consolidated formal hearing was held before Frank A. Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 19, 1978 at 1:30 P.M. Applicant Seymour Singer appeared by Martin Stewart, Esq. Applicant Marilyn Singer did not appear. The Audit Division appeared by Peter Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

The Hearing Officer offered to sever and adjourn the hearing as to applicant Marilyn Singer but Martin Stewart, Esq., declined, representing that he was authorized to appear on behalf of said applicant notwithstanding the failure to file a power of attorney, executed by said applicant and authorizing said attorney to represent her. As a condition of proceeding with the hearing as to applicant Marilyn Singer, Mr. Stewart was to submit, within thirty days after the close of the hearing, an executed power of attorney as to said applicant and a written stipulation that the evidence adduced at the hearing would be binding on said applicant. No such submission was made and applicant Marilyn Singer is presently in default.

The Audit Division moved to dismiss against applicants, Seymour Singer and Marilyn Singer, pursuant to 20 NYCRR 601.5(d)(2) (Rules of Practice and Procedure of the State Tax Commission) on the ground that a perfected petition was not filed in accordance with 20 NYCRR 601.5.

#### ISSUES

I. Whether applicants, Seymour Singer and Marilyn Singer, were in possession or control of 2,500 cartons of unstamped or unlawfully stamped packages of cigarettes in violation of Article 20 of the Tax Law.

II. Whether the penalty of \$5,580.00 imposed against said applicants was reasonable and proper under Article 20 of the Tax Law.

#### FINDINGS OF FACT

1. On September 16, 1977, the Audit Division issued a Notice of Determination of Tax Due Under Cigarette Tax Law against applicant Seymour Singer, imposing a penalty of \$5,580.00 pursuant to section 481.1(b) of the Tax Law, based on 2,490 cartons of cigarettes subject to penalty.

2. On September 16, 1977, the Audit Division issued a Notice of Determination of Tax Due Under Cigarette Tax Law against applicant Marilyn Singer, imposing a penalty of \$5,580.00 pursuant to section 481.1(b) of the Tax Law, based on 2,490 cartons of cigarettes subject to penalty.

3. By letter dated September 23, 1977, applicants, Seymour and Marilyn Singer, by their attorney, Martin Stewart, Esq., requested a hearing with respect to the aforesaid notices of determination.

4. By letter dated September 28, 1977, a representative of the Cigarette Tax Section of the Audit Division advised Martin Stewart, Esq. that his request for hearing would be forwarded to the Tax Appeals Bureau for disposition.

5. By letters dated October 19, 1977 and January 11, 1978, the State Tax Commission requested Martin Stewart, Esq. to file perfected petitions on

behalf of applicants, Seymour Singer and Marilyn Singer, pursuant to 20 NYCRR 601.5. At no time did the State Tax Commission advise said applicants or their attorney that the September 23, 1977 request for hearing would be deemed a perfected petition or application. Said applicants did not file a petition or application of any kind or nature whatsoever.

6. By notice dated May 17, 1978, applicants, Seymour Singer and Marilyn Singer, were notified of the June 19, 1978 hearing in the instant proceeding.

7. Applicants, Seymour Singer and Marilyn Singer, were not agents or dealers appointed by the State Tax Commission with authority to purchase unstamped cigarettes or to purchase and affix New York State tax stamps.

8. John Askew, Detective, Suffolk County Police Department, was assigned to the Suffolk County District Attorney's office in the summer of 1976 and, working undercover, made contact with one James Rogers on or about May 18, 1976, at which time Askew bought 29 cartons and 9 packs of assorted, unstamped cigarettes. Applicants, Seymour Singer and Marilyn Singer, were not present at that transaction and no credible evidence was offered to connect them with such transaction.

9. On or about June 17, 1976, Askew met with Rogers at Roosevelt Raceway, where Rogers was employed as a pari-mutuel clerk, to discuss future purchases of larger amounts of cigarettes. Rogers handed Askew an "order" form and Askew placed an order for 150 cartons of cigarettes.

10. On or about June 24, 1976, Askew again met with Rogers at Roosevelt Raceway, at which time Rogers stated that he encountered difficulties making delivery and that he (Askew) would receive a telephone call from "Sy".

11. On or about July 16, 1976, Askew received a telephone call from a woman who identified herself as Marilyn Singer, stating that she had the cigarettes; an appointment was arranged for delivery of the cigarettes later

that evening at the Green Acres Shopping Center in Valley Stream, Long Island. At that meeting, attended only by Askew and applicant Marilyn Singer, Askew received 150 cartons of unstamped cigarettes from said applicant but was told by her that payment should be made to Rogers. As to all future deliveries, said applicant told Askew that she or "Sy" would contact him and payment would henceforth be made directly to them.

12. On or about July 21, 1976, Askew met with Rogers again and paid him \$540.00 for the delivery of cigarettes by applicant Marilyn Singer on July 16th. At this meeting, Rogers told Askew that all future orders, without limitation as to quantity, would be handled by "Sy or Marilyn".

13. On August 3, 1976, Askew (by prior arrangement made pursuant to a telephone conversation with applicant Seymour Singer and a meeting with both applicants) met in Brooklyn, New York, with applicants, Seymour Singer and Marilyn Singer, to pick up an order of 150 cartons of cigarettes. Another unidentified male was also present. Said applicants advised Askew that they could not make delivery at that time and would contact him in the future.

14. On or about August 6, 1976, Askew met with applicant Seymour Singer in Babylon, Long Island, and did purchase 150 cartons of assorted, unstamped cigarettes for \$540.00. At this same meeting, Askew asked said applicant to supply another 1600 cartons of cigarettes.

15. On or about August 12, 1976, Askew had a telephone conversation simultaneously with applicants, Seymour Singer and Marilyn Singer, with respect to the arrangements for delivery and payment of the more recent, larger order of cigarettes. On the next day, Askew received a telephone call from applicant Seymour Singer advising him that a meeting was arranged that night at the Green Acres Shopping Center in Valley Stream, Long Island.

16. Present at the meeting in Green Acres Shopping Center on August 13, 1976 were Askew, applicants, Seymour and Marilyn Singer, and another man,

identified as Anthony Giacinto. Applicant Seymour Singer directed Askew to Giacinto's car where 810 cartons of unstamped cigarettes were stored. The balance of the shipment was to be delivered by Giacinto (using Askew's car, an unmarked police vehicle) later that night at or on Route 110 in Amityville, New York. The agreed-upon price was to be paid by Askew to applicant Seymour Singer on the delivery of the balance of the shipment. Later that night, Askew received the balance of the shipment (780 cartons of unstamped cigarettes) from Giacinto at the prearranged location. Applicants, Seymour and Marilyn Singer, were not present but, rather, by prearrangement, were waiting for Askew at a diner in Babylon, Long Island.

17. When Askew arrived at the diner in Babylon, applicant Seymour Singer requested the agreed-upon price from Askew who informed said applicant and applicant Marilyn Singer (who was also present), that he was a police officer and that they were under arrest, being charged with the illegal possession and control of more than 100 cartons of untaxed cigarettes.

18. James Rogers was subsequently arrested after a grand jury indictment.

19. During the period in question, applicant Seymour Singer was employed at Roosevelt Raceway as a pari-mutuel clerk.

20. On March 23, 1977, applicant Seymour Singer pleaded guilty in Supreme Court, Suffolk County, to a felony, illegal possession of more than 100 cartons of untaxed cigarettes, and was sentenced to a term in jail of sixty (60) days and a five-year period of probation. (Indictment No. 1521-76).

21. On March 23, 1977, applicant Marilyn Singer pleaded guilty in Supreme Court, Suffolk County, to a misdemeanor, conspiracy - 3rd degree, and was sentenced to pay a fine of \$250.00 and placed on three years probation. (Indictment No. 1521-76).

#### CONCLUSIONS OF LAW

A. That the motion of the Audit Division to dismiss pursuant to 20 NYCRR



601.5(d)(2) is denied. While no petition or application was filed by or on behalf of applicants, Seymour Singer and Marilyn Singer, and no reason or excuse offered for such failure to file, the noticing of this matter for hearing subsequent to the two written demands of the State Tax Commission that a perfected petition be filed, may well have created in the mind of said applicant's attorney the impression that the requirement of filing a perfected petition was waived, thereby creating prejudice to said applicants. Accordingly, the letter of Martin Stewart, Esq., dated September 23, 1977, requesting a hearing, shall be deemed a perfected petition or application filed by or on behalf of said applicants pursuant to 20 NYCRR 601.5.

B. That, pursuant to Article 20 of the Tax Law, the State of New York imposes a tax on all cigarettes possessed in this State for sale or use.

C. That, pursuant to section 471.1 of the Tax Law, there is a presumption that all cigarettes within the State of New York are subject to the tax under Article 20 of the Tax Law until the contrary is established and the burden of proof that any such cigarettes are not taxable is on the person in possession thereof.

D. That, pursuant to 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 such penalty, in whole or in part.

E. That, during the period in question, applicants, Seymour Singer and Marilyn Singer, each had 1,890 cartons of unstamped or unlawfully stamped packages of cigarettes in their possession or under their control, rather than the 2,500 cartons on which the penalties were based ( $2,500 - 10 = 2,490$ ).

F. That the penalties imposed by the Audit Division pursuant to section 481.1(b) of the Tax Law are reduced to \$4,360.00 for each applicant. (300

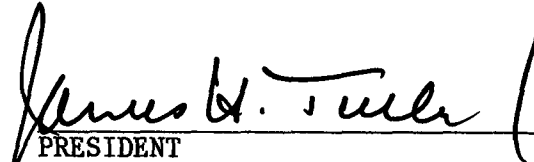
cartons at \$4.00 per carton; 1,580 cartons at \$2.00 per carton).

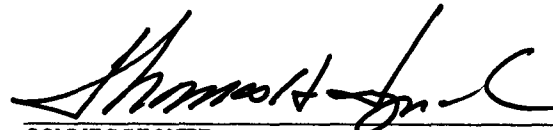
G. That except as provided for by Conclusions of Law "E" and "F", the application of Seymour Singer and Marilyn Singer is hereby denied and the notices of determination issued September 16, 1977 are sustained.

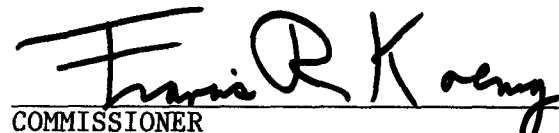
DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER