

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Connie Yunginger :

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 1977. :

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

Connie Yunginger

78 Arthur Ave.

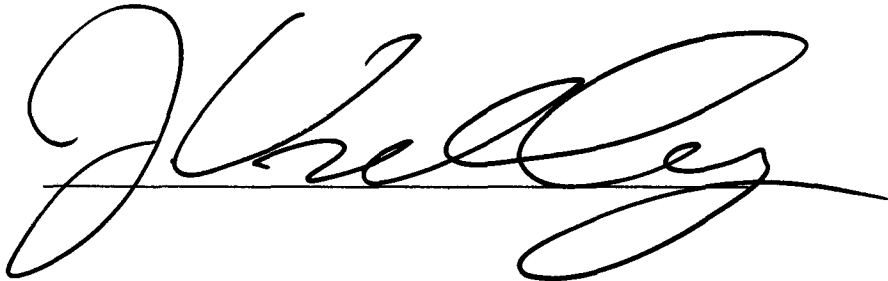
Staten Is., NY

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

In the Matter of the Petition  
of

Connie Yunginger

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 1977. :

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 Eugene V.P. Ferretti the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

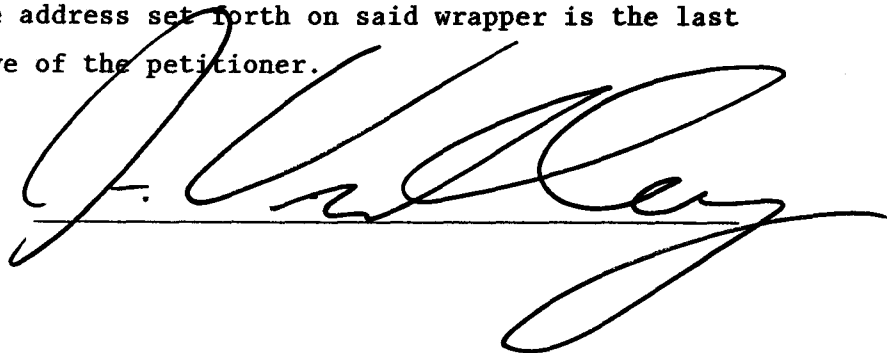
Mr. Eugene V.P. Ferretti  
350 St. Marks Pl.  
Staten Is., NY 10301

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  
22nd day of February, 1980.

Joanne Knapp



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

February 22, 1980

Connie Yunginger  
78 Arthur Ave.  
Staten Is., NY

Dear Ms. Yunginger:

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  
Eugene V.P. Ferretti  
350 St. Marks Pl.  
Staten Is., NY 10301  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :

of :

CONNIE YUNGINGER :

DECISION

for a Hearing to Review a Determination :  
under Article 20 of the Tax Law for the  
Year 1977. :

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Applicant, Connie Yunginger, 78 Arthur Avenue, Staten Island, New York, filed an application for a hearing to review a determination under Article 20 of the Tax Law for the period June 28, 1977 (File No. 19526).

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 February 18, 1978 at 1:40 P.M. Applicant appeared by Eugene V. P. Ferretti, Esq. The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

#### ISSUE

Whether the \$2,838.00 penalty imposed on applicant for unlawful possession of unstamped cigarettes was proper.

#### FINDINGS OF FACT

1. On June 28, 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 819 cartons, for a total of 1,119 cartons subject to penalty, which were allegedly seized on May 5, 1977. The total penalty assessed against applicant was \$2,838.00.

2. On July 20, 1977, (according to an inter-office memo), applicant's attorney sent a letter to the Audit Division requesting a hearing on cigarette determination #3223, which had been issued against applicant on June 28, 1977.

3. On June 9, 1977, applicant, Connie Yunginger, pleaded "Guilty" on Docket No. 701573 in Part AP-1 of the Criminal Court of the City of New York to a reduced charge of violation of Article 20, section 481 of the Tax Law, as a misdemeanor. Judge A.F. Marra imposed a fine of \$100.00 on applicant, which she paid on June 9, 1977.

4. On the advice of counsel, applicant appeared but did not testify at the formal hearing.

5. The Audit Division adduced neither oral nor written evidence as to the alleged seizure of unstamped cigarettes other than a photocopy of the Certificate of Disposition dated August 15, 1977.

#### CONCLUSIONS OF LAW

A. That by her plea of "Guilty" the defendant - applicant admitted the possession of less than 20,000 cigarettes (100 cartons) in unstamped or unlawfully stamped packages. While the Notice of Deficiency was presumptively correct as to the alleged 1,119 cartons seized subject to penalty, no probative evidence was otherwise adduced to establish applicant's possession of any number of unstamped packages of cigarettes.

B. That while the State Tax Commission may impose a penalty of not more than \$100.00 for each carton of unstamped cigarettes, the State Tax Commission may, in its discretion, remit all or part of the penalty (section 481.1(b) of the Tax Law). Accordingly, the penalty against applicant, Connie Yunginger, is hereby reduced to \$5.00 per carton on 99 cartons for a total of \$495.00.

C. That except as modified by Conclusion of Law "B", the application of Connie Yunginger is in all respects denied, and Determination No. 3223 dated June 28, 1977 is sustained.

DATED: Albany, New York

**FEB 22 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER