

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS ANGEL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
~~or a Refund of Gift~~ Taxes under Article (x) 26-A of the  
Tax Law for the ~~Quarter~~ ~~Period~~ ~~Period~~  
Quarter Ended March 31, 1972.

State of New York  
County of Albany

Bruce Batchelor, 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 7th day of June, 1977, he served the within  
Notice of Decision by (certified) mail upon Morris Angel  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Mr. Morris Angel  
898 Woodmere Drive  
North Woodmere, New York 11598

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~~  
~~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

7th day of June, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 7, 1977

TELEPHONE: (518) **457-1723**

Mr. Morris Angel  
898 Woodmere Drive  
North Woodmere, New York 11598

Dear Mr. Angel:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section **(x) 1007(b)** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion 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 or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

**Paul B. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MORRIS ANGEL	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Gift Tax under	:	
Article 26-A of the Tax Law for the	:	
Quarter Ended March 31, 1972.	:	

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Petitioner, Morris Angel, of 898 Woodmere Drive, North Woodmere, New York 11598, has filed a petition for a redetermination of a deficiency or for refund of gift tax under Article 26-A of the Tax Law for the quarter ended March 31, 1972. (File No. 00629). A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 4, 1976, at 2:45 P.M. Petitioner, Morris Angel, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

#### ISSUES

I. On what date was the indenture executed transferring from Morris I. Angel and Rosalyn Angel to Rosalyn Angel certain real property located at 898 Woodmere Drive, North Woodmere, New York?

II. Whether petitioner has met his burden of proof in establishing that Rosalyn Angel had previously contributed toward the equity in the property and thus the transfer to her in 1972 was a gift only of one-half interest.

FINDINGS OF FACT

1. Petitioner did not file a gift tax return on the transfer of property at 898 Woodmere Drive for the quarter ended March 31, 1972.

2. On June 5, 1974, the Miscellaneous Tax Bureau, Gift Tax, issued a Statement of Audit Changes against petitioner claiming that a taxable gift of real property had been made to Rosalyn Angel on January 7, 1972. The Miscellaneous Tax Bureau claimed a gift tax due on the \$50,500.00 market value of the house of \$761.25, with interest of \$93.98 and a penalty of \$190.31. In accordance with the aforesaid statement of audit changes, a Notice of Deficiency was issued on February 21, 1975.

3. On June 11, 1975, petitioner filed a petition for redetermination of deficiency or for refund of a tax on the transfer of property by gift under Article 26-A.

4. By letter dated March 19, 1975, petitioner mailed to the Miscellaneous Tax Bureau a copy of an indenture relating to certain real property known by street number 898 Woodmere Drive, North Woodmere, New York. The indenture was executed on January 7, 1972. The indenture indicates that on that date petitioner and

Rosalyn Angel appeared before a notary public to execute the instrument. The indenture was recorded by the County Clerk, Nassau County, on January 12, 1972.

5. In the same letter of March 19, 1975, petitioner enclosed a letter from an attorney, Sidney Hoffman, Esq., 401 Broadway, New York, New York 10013, reading in relevant part as follows:

"With respect to your question as to when the property to wit your residence house was transferred to you, same took place in 1971 as per the date on the deed at which time it was delivered to you for recording."

6. By letter dated October 17, 1975, Herbert Frank, on behalf of petitioner, submitted an affidavit dated October 6, 1975, from Sidney Hoffman, Esq., reading in relevant part as follows:

"That prior to December 31, 1971, ROSALYN ANGEL, requested that I prepare a Deed from her husband MORRIS ANGEL and herself to ROSALYN ANGEL, covering premises 898 Woodmere Drive, North Woodmere, New York.

"I subsequently drew the said deed and mailed same to ROSALYN ANGEL to be executed and recorded."

7. At the November 4, 1976 formal hearing petitioner and his wife, Rosalyn Angel, a witness, testified that they jointly paid for the house at 898 Woodmere Drive, which was purchased in 1956. Petitioner was given thirty days following the hearing to submit additional documentation to substantiate his claim. By letter dated November 30, 1976, the following information was received from Mrs. Angel:

"I lived with my parents prior to my marriage in 1945, and I was able to save all my earnings. After marriage, I continued to work until my eighth month of

pregnancy at the Albert & Davidson Pipe Corp. in Brooklyn, New York. Then I worked continually with my husband at Angel Drapery Co., Inc. of which I was secretary-treasurer except for a few months each time I gave birth (we have three sons), until 1959. At that time I took a job with Peninsula Counseling Center, Inc. then called Peninsula Child Guidance Center, as office-manager, bookkeeper, and have been working at this job ever since.

"When we purchased our home in 1956, we put down a total payment of \$9,350.00. The purchase price was \$27,350.00, leaving a mortgage balance of \$18,000.00. We had a joint savings account and I had my own savings account, all of which went into the down payment. In addition, my mother gave me a sum of \$2,000.00 towards the down payment, so that I paid more than 1/2 of the down payment."

#### CONCLUSIONS OF LAW

A. That title to the real property at 898 Woodmere Drive passed from Morris Angel and Rosalyn Angel to Rosalyn Angel on January 7, 1972. The transfer, therefore, is subject to the Gift Tax which is imposed on transfers by gift during any calendar quarter beginning on or after January 6, 1972, by resident individuals.

B. That on the basis of the testimony of the petitioner and his wife, Rosalyn Angel, a witness, at the formal hearing, and on the basis of Mrs. Angel's letter dated November 30, 1976, petitioner has sustained his burden of proof in establishing that Rosalyn Angel had previously contributed one half of the equity in the property.

C. That the petition of Morris Angel is granted to the extent that the Miscellaneous Tax Bureau is directed to modify the Statement of Audit Changes and the Notice of Deficiency to reflect Mrs. Angel's one-half ownership interest in the real property at 898 Woodmere Drive prior to its transfer to her on January 7, 1972, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

June 7, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER