

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Josephine Cook

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Gift Tax :  
under Article 26-A of the Tax Law :  
for the Year 1972. :

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 certified mail upon Josephine Cook, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Josephine Cook  
43-25 44th St.

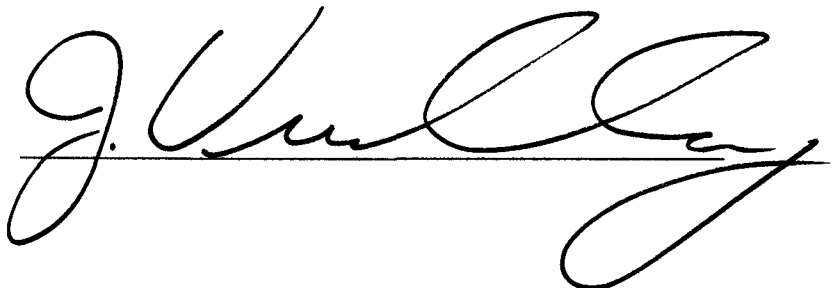
Long Island City, NY 11104

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  
ALBANY, NEW YORK 12227

May 23, 1980

Josephine Cook  
43-25 44th St.  
Long Island City, NY 11104

Dear Ms. Cook:

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) 1007(b) 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

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In the Matter of the Petition	:	
of	:	
JOSEPHINE COOK	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Gift Tax under Article 26A	:	
of the Tax Law for the Year 1972.	:	

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Petitioner, Josephine Cook, 43-25 44th Street, Long Island City, New York 11104, filed a petition for redetermination of a deficiency or for refund of gift tax under Article 26A of the Tax Law for the year 1972 (File No. 15196).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 19, 1978 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the transfer of real property by petitioner by deed to her brother and sister-in-law was a gift and, thus, subject to the imposition of gift tax.

FINDINGS OF FACT

1. On February 9, 1976, the Miscellaneous Tax Bureau issued a Statement of Audit Changes against petitioner, Josephine Cook. The Bureau asserted that on notification by the Internal Revenue Service of the filing of a Federal gift tax return by petitioner and on the basis of petitioner's failure to reply to the State's inquiry, an estimated assessment was made by the Miscellaneous Tax Bureau on information available. Accordingly, on April 30, 1974 a Notice of Deficiency was issued against Josephine Cook in the amount of \$1,000.00, plus penalty and interest of \$472.57, for a total of \$1,471.52.

2. On July 10, 1972, petitioner, Josephine Cook, and her sister, Angela Donlon, as tenants in common, granted property at 63 Charles Street, New York, New York, to their brother, Frank Lamanna, and his wife, Louise Lamanna. They received no money for the transfer. This property had been devised to them pursuant to the will of another sister, Victoria Lamanna, just prior to the transfer to Frank Lamanna, and his wife.

The computations of the Real Property Transfer Tax Return for the City of New York indicated that Frank Lamanna owned a mortgage covering the premises in the amount of \$36,228.48. No transfer tax was required and none was paid under the exemption that the conveyance was without consideration.

An appraisal of the property made for the Estate of Victoria Lamanna, dated July 31, 1972, opined that the market value was \$72,000.00. An improvement as of April 21, 1972 was made on the property. The assessed valuation of the property for the year ending June, 1972 was \$40,000.00.

4. Petitioner, Josephine Cook, cooperated with the Miscellaneous Tax Bureau and was advised by an attorney who died prior to the hearing.

#### CONCLUSIONS OF LAW

A. That section 1001 of the Tax Law imposes a tax on the transfer of property by gift by any individual.

B. That section 1009 of the Tax Law provides that if the gift is made in property, the value at the date of the gift shall be considered the amount of the gift.

C. That section 1009 of the Tax Law also provides for an exclusion from gifts in the amount of \$3,000.00 for the calendar year for each donee.

D. That the value of the property given by petitioner, Josephine Cook, and her sister, Angela Donlon, as per estate appraisal was \$70,000.00, minus the amount of the lien of \$36,228.48. Therefore, the value in July, 1972 of the gift to their brother and sister-in-law was \$33,771.52.

E. That petitioner, Josephine Cook, as donor, is entitled to an exclusion of \$3,000.00 for each donee, i.e., a \$3,000.00 exclusion for Frank Lamanna and \$3,000.00 for Louise Lamanna.

F. That since petitioner, Josephine Cook, was a tenant in common of the property, only one-half the value of the property, or \$16,885.76, may be deemed a gift from her to Frank Lamanna and Louise Lamanna.

G. That the penalties and interest, in excess of the minimum statutory rate, are cancelled.

H. That the petition of Josephine Cook is granted to the extent that the value of the gift is reduced to \$16,885.76, less \$6,000.00 in exclusions, for total taxable gifts of \$10,885.76. The Audit Division is hereby directed to recompute the tax based on said sum, plus interest at the minimum statutory rate.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER