

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUTH K. DESHON (Deceased)

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
~~a Refund of a Deficiency or a Refund~~
of Gift
Taxes under Article ~~(x)~~ 26-A of the
Tax Law for the ~~Year(s) or Period(s)~~
Calendar Quarter Ending June 30, 1972.

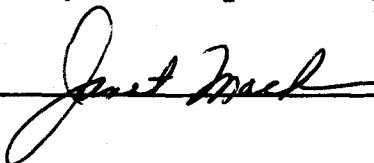
State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1977, she served the within Notice of Decision by (certified) mail upon Ruth K. Deshon (Deceased) c/o Eugene Parrs & John S. Gilman, Esqs. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Ruth K. Deshon (Deceased) c/o Eugene Parrs & John S. Gilman, Esqs. Woods, Oviatt, Gilman, Sturman & Clarke 44 Exchange Street Rochester, New York 14614 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 July, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUTH K. DESHON (Deceased)

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
~~Extension of a Deficiency or~~ a Refund
of Gift
Taxes under Article (x) 26-A of the
Tax Law for the ~~Year(s) or Period(s)~~
Calendar Quarter Ending June 30, 1972.

State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1977, she served the within Notice of Decision by (certified) mail upon Eugene Parrs & John S. Gilman (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Eugene Parrs & John S. Gilman, Esqs.
Woods, Oviatt, Gilman, Sturman & Clarke
44 Exchange Street
Rochester, New York 14614
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 July, 1977.

Marsina Donnini

Janet Muck



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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

July 23, 1977

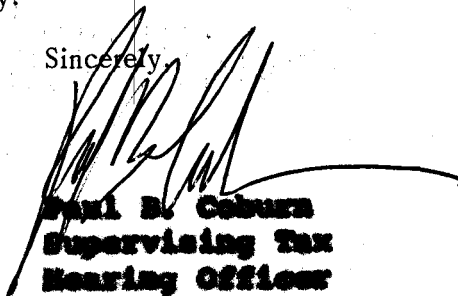
Ruth K. Doshon (Deceased)
c/o Eugene Farre & John S. Gilman, Esqs.
Woods, Oviatt, Gilman, Sturman & Clarke
44 Exchange Street
Rochester, New York 14614

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 **(b) 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Paul D. Ceburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RUTH K. DESHON (Deceased)	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Gift Tax under Article 26-A	:	
of the Tax Law for the Calendar Quarter	:	
Ending June 30, 1972.	:	

Petitioner, Ruth K. Deshon (Deceased), 525 Penfield Road, Rochester, New York 14625, filed a petition for redetermination of a deficiency or for refund of gift tax under Article 26-A of the Tax Law for the calendar quarter ending June 30, 1972. (File No. 11305).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on November 18, 1976 at 2:45 p.m. Petitioner appeared by Eugene Parrs, Esq. and John S. Gilman, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the re-registration of 1,040 shares of stock in Eastman Kodak Co., from the account of Ruth K. Deshon and Shirley Carre, jointly, to the account of Shirley Carre, solely, was a transfer subject to gift tax for the calendar quarter ending June 30, 1972.

FINDINGS OF FACT

1. In April of 1972, 1,040 shares of stock in Eastman Kodak, Co., that were jointly registered to Ruth K. Deshon and Shirley Carre, were re-registered solely to Shirley Carre by the Lincoln First Bank of Rochester, transfer agent. No gift tax return was filed concerning the transaction.

2. On October 24, 1975, the Miscellaneous Tax Bureau issued a Statement of Audit Changes against petitioner, Ruth K. Deshon, imposing gift tax for the calendar quarter ending June 30, 1972, consisting of a deficiency of \$1,039.30, plus a penalty of \$259.83 with \$201.94 in interest, upon the grounds that the transfer of 1,040 shares of Eastman Kodak stock on April 4, 1972, by Ruth K. Deshon to Shirley Carre, was a gift. Accordingly, a Notice of Deficiency was issued totaling \$1,501.07.

3. On June 5, 1963, 197 shares of Eastman Kodak stock registered in the name of Shirley Deshon was re-registered in the names of Shirley Carre (the married name of Shirley Deshon) and Ruth K. Deshon, jointly. In March of 1964, 53 shares of Eastman Kodak stock registered in the name of Shirley Carre were re-registered in the names of Shirley Carre and Ruth K. Deshon, jointly. These 250 shares grew by stock-splits and stock dividends into the 1,040 shares of stock in issue.

4. The re-registrations mentioned in Findings of Fact "3", supra, were for the purpose of avoiding possible adverse effects of the inheritance laws of the Island of Sark of the United Kingdom, of which Shirley Carre became a resident immediately after her marriage in June of 1963. There was no gift intended, nor was there a delivery of any of the stocks in issue, nor was there any acceptance of the stocks in issue by petitioner, Ruth K. Deshon.

5. During the period of joint registration, Shirley Carre maintained dominion and control of the stocks in issue and a joint bank account in the names of Shirley Carre and Ruth K. Deshon, set up solely to receive cash dividends on the stocks in issue. Any withdrawals on the aforementioned bank account were made by Shirley Carre.

6. In 1971, Shirley Carre's fears of the laws of the Island of Sark abated and she ordered the re-registration mentioned in Findings of Fact "1", supra.

CONCLUSIONS OF LAW

A. That section 1004(b) of the Tax Law specifically incorporates by reference section 2511 of the Internal Revenue Code to determine transfers subject to a gift tax and that, Treasury Regulation 25.2511-1(g)(1) states in pertinent part:

"The application of the (gift) tax is based on the objective facts of the transfer and the circumstances

under which it is made, rather than on the subjective motives of the donor. However, there are certain types of transfers to which the tax is not applicable. It is applicable only to a transfer of beneficial interest in property. It is not applicable to bare legal title to a trustee." (emphasis supplied)

B. That the transfer of 197 shares of Eastman Kodak stock in 1963 and 53 shares of said stock in 1964 from Shirley Carre, solely, to Shirley Carre and Ruth K. Deshon, jointly, transferred a bare legal title, in that there was no intent to make an actual gift by Shirley Carre, nor delivery to and acceptance by Ruth K. Deshon. That since there was no beneficial interest transferred to Ruth K. Deshon in the aforementioned transaction, therefore, there was no gift made within the meaning and intent of section 1004(b) of the Tax Law, and section 2511 of the Internal Revenue Code and Treasury Regulation 25.2511-1(g) (1). Matter of N. T. Bucholz 13 TC 201, and In re Muckle's Estate 35 N.Y.S. 2d 391, (Surrogates Court, Ontario County, May 25, 1942).

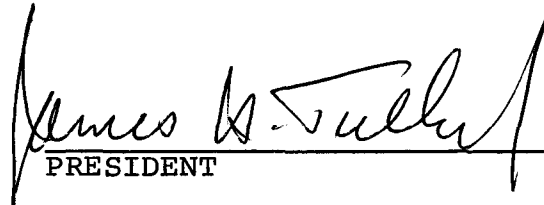
C. That since the transfers mentioned in Conclusion of Law "B", supra, gave bare legal title to Ruth K. Deshon in the stock transferred therein and that since, Shirley Carre at all times maintained dominion and control in said stock, therefore the re-registration of the 1,040 shares of Eastman Kodak stock in April of 1972 from the names of Shirley Carre and Ruth K. Deshon, jointly, to the name of Shirley Carre, solely, did not

constitute the transfer of beneficial interest and was not a taxable gift within the meaning and intent of section 1004(b) of the Tax Law and section 2511 of the Internal Revenue Code and Treasury Regulation 25.2511-1(g)(1).

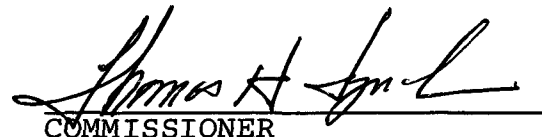
D. That the petition of Ruth K. Deshon is granted and the Notice of Deficiency issued October 24, 1975 is cancelled.

DATED: Albany, New York
July 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER