

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Clifford J. Lamb :

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 Period 12/31/72. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Clifford J. Lamb, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Clifford J. Lamb
23 Sunset Terrace
Baldwinsville, NY 13027

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
3rd day of October, 1980.

Robert Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Clifford J. Lamb :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Gift Tax :
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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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Merle D. Melvin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

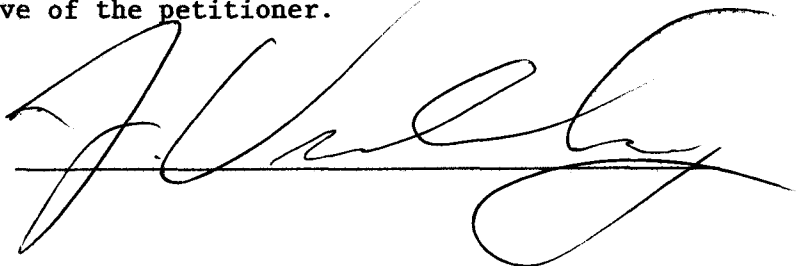
Mr. Merle D. Melvin
700 Merchants Bank Bldg.
Syracuse, NY

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 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
3rd day of October, 1980.

Debbie Bank



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

October 3, 1980

Clifford J. Lamb
23 Sunset Terrace
Baldwinsville, NY 13027

Dear Mr. Lamb:

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
Merle D. Melvin
700 Merchants Bank Bldg.
Syracuse, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CLIFFORD J. LAMB	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Gift Taxes under Article	:	
26-A of the Tax Law for the Quarter Ended	:	
December 31, 1972.	:	

Petitioner, Clifford J. Lamb, 23 Sunset Terrace, Baldwinsville, New York 13027, filed a petition for redetermination of a deficiency or for refund of gift taxes under Article 26-A of the Tax Law for the quarter ended December 31, 1972 (File No. 11714).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on July 20, 1977 at 10:45 A.M. Petitioner appeared by Merle D. Melvin, Esq. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the value of stock given to family members was properly evaluated upon the gift tax return filed by petitioner.

FINDINGS OF FACT

1. Petitioner, Clifford J. Lamb, made the following gifts during the period at issue:

- | | |
|--|---------------------------------------|
| (a) to Curtis Lamb | 161 shares New York Starcraft, Inc. |
| | 100 shares A. C. Lamb & Sons, Inc. |
| (b) to Fred Jr. Fauler and
Norma Fauler | 300 shares of A. C. Lamb & Sons, Inc. |

Petitioner valued the stock at \$100.00 per share.

2. Petitioner filed a Federal Quarterly Gift Tax Return on which he claimed total gifts of \$60,000.00. From this petitioner subtracted a total of \$18,000.00 in exclusions, based on six \$3,000.00 annual exclusions. (Petitioner's wife had executed a consent to have the gifts considered as having been made one-half by each spouse. Thus, petitioner calculated three donee exemptions for himself and three for his wife. The three donees were Curtis Lamb, Fred Fauler and Norma Fauler.) Finally, from the remaining \$42,000.00 "Total included amount of gifts" petitioner subtracted a specific exemption of \$42,000.00, resulting in the amount of taxable gifts equal to zero.

3. Petitioner timely filed a New York State Resident Quarterly Gift Tax Return for the quarter ended December 31, 1972, reporting \$630.00 as tax due. A refund of \$630.00 was sought in his petition.

4. The tax was recomputed by an associate tax examiner who recommended that audit changes reflect the following computation:

1971	Earnings per partnership return	\$30,087.00
1970	" " " "	85,019.28
1968	" " " "	45,307.01
	Average for three years	53,471.10
	Less officers' salaries	18,000.00
		<u>\$35,471.10</u>
	Estimated Federal and State Taxes (31%)	10,996.04
	Net income after taxes	<u>\$24,475.06</u>
	Capitalized at 10%	\$244,750.60
	810 shares A.C. Lamb & Sons, Inc.	
	340 shares New York Starcraft, Inc.	
	<u>1,150 shares</u>	
	price per share	\$212.83

In his computation, the auditor eliminated the extraordinary years 1969 and 1972, allowed \$18,000.00 for salaries of two officers and allowed 31 percent for State and Federal taxes. Petitioner contended that valuation of the corporations at 10 times earnings was unrealistic in view of the high risk nature of the business and that 5 times earnings would be more realistic.

5. On January 22, 1975, the Miscellaneous Tax Bureau issued a Statement of Audit Changes against petitioner imposing additional gift tax for the quarter ended December 31, 1972 in the amount of \$2,196.70, less payment of \$630.00, plus interest of \$227.27, for a total of \$1,793.97. On February 25, 1975, a Notice of Deficiency was issued in the amount of \$1,566.70, plus interest.

6. Petitioner and his father incorporated A. C. Lamb & Sons, Inc. in January 1972. The business was started fifty years earlier as a partnership with other family members. The business involved the selling and servicing of generators, pumps, outboard motors, boats and chainsaws. The wholesale part of the business was handled by New York Starcraft, Inc. Petitioner owned 80 percent of the stock in A. C. Lamb & Sons, Inc. In 1972 A. C. Lamb & Sons, Inc. maintained a half million dollar line of credit with Merchants National Bank in Syracuse, New York with personal guarantees from the officers and a security agreement on collateral in the form of contract rights, equipment and a mortgage on property owned by the officers. The corporation's financial statement dated September 30, 1972 listed current assets of \$890,927.00 and liabilities of \$839,087.00.

7. The accountant who prepared the petitioner's Federal and State gift tax returns based the value of the stock on the book value at the time of the formation of A. C. Lamb & Sons, Inc. as a corporate entity in January, 1972.

CONCLUSIONS OF LAW

A. That section 1009 of the Tax Law provides that gift tax provisions of the United States Internal Revenue Code of 1954 as amended through December 31, 1971, shall apply to the determination of New York gift tax to the extent specified in Article 26-A of the Tax Law. Section 2512(a) of the Internal

Revenue Code provides: "If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift."

B. That the type of business in which A. C. Lamb & Sons, Inc. and New York Starcraft, Inc. were engaged is ordinarily valued in the area of 6.5 times earnings. Accordingly, the Audit Division is directed to recompute the tax using a value per share of \$138.34.

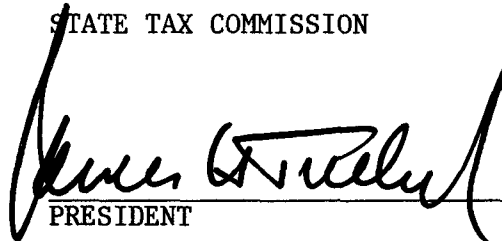
C. That petitioner and his wife are both entitled to the \$3,000.00 annual exclusion per donee, for petitioner's wife has consented to the gifts in this case. The fact that a gift was made to Fred Jr. and Norma Fauler constitutes a gift in joint ownership which represents multiple gifts to the individual co-tenants. Consequently an exclusion is allowed for each gift. Buder v. Commissioner, 25 T.C. 1012 (1956). A total of \$18,000.00 in exemptions is hereby allowed.

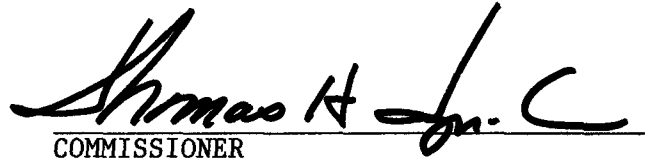
D. That except as provided in Conclusions of Law "B" and "C", the petition of Clifford J. Lamb is denied and the Notice of Deficiency issued February 28, 1975 is sustained.

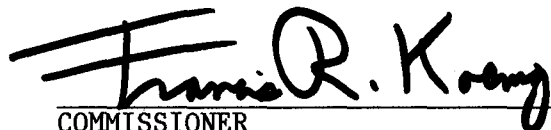
DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER