

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Malcom P. & Margaret McLean :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Gift Tax :  
under Article 26A of the Tax Law  
for the Periods 6/30/72 & 9/30/72. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Malcom P. & Margaret McLean, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

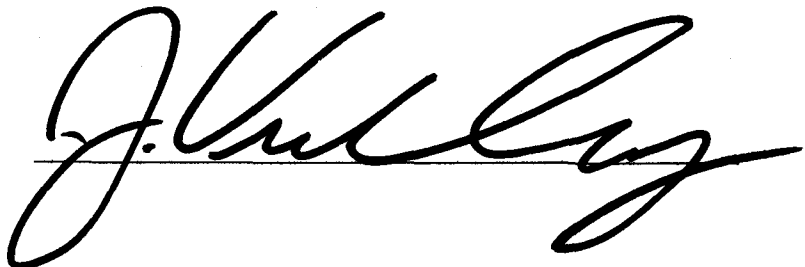
Malcom P. & Margaret McLean  
Suite 501, 660 Madison Ave.  
New York, NY 10021

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  
16th day of May, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Malcom P. & Margaret McLean

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Gift Tax :  
under Article 26A of the Tax Law  
for the Periods 6/30/72 & 9/30/72. :

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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Henry T. Benedetto 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. Henry T. Benedetto  
660 Madison Ave.  
New York, NY 10021

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  
16th day of May, 1980.

Joanne Knapp



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

May 16, 1980

Malcom P. & Margaret McLean  
Suite 501, 660 Madison Ave.  
New York, NY 10021

Dear Mr. & Mrs. McLean:

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  
Henry T. Benedetto  
660 Madison Ave.  
New York, NY 10021  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
	:	
of	:	
	:	
MALCOLM P. McLEAN and MARGARET S. McLEAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Gift Tax under Article 26A	:	
of the Tax Law for the Quarters Ended	:	
June 30, 1972 and September 30, 1972.	:	

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Petitioners, Malcolm P. McLean and Margaret S. McLean, Suite 501, 660 Madison Avenue, New York, New York 10021, filed petitions for a redetermination of a deficiency or for refund of Gift Tax under Article 26A of the Tax Law for the quarters ended June 30, 1972 and September 30, 1972 (File Nos. 14254 and 14255).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 16, 1978 at 11:00 A.M. Petitioners appeared by Henry T. Benedetto, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUE

What is the value, for gift tax purposes, of certain stock given in trust by petitioners.

FINDINGS OF FACT

1. Petitioners, Malcolm P. McLean and Margaret S. McLean, filed separate New York State Resident Quarterly Gift Tax Returns for the taxable quarters ended June 30, 1972 and September 30, 1972.

2. On March 30, 1973 the Miscellaneous Tax Bureau issued two statements of audit changes to Malcolm P. McLean and two statements of audit changes to Margaret S. McLean. The statements detailed and explain the underpayment of

gift taxes on gifts made by petitioners for the quarters ended June 30, 1972 and September 30, 1972.

3. Based on the statements of audit changes, on July 19, 1975 the Miscellaneous Tax Bureau issued a Notice of Deficiency to Malcolm P. McLean for gift taxes due for taxable gifts made in the quarters ended June 30, 1972 and September 30, 1972 of \$11,677.87 plus interest of \$1,936.00 for a total of \$13,613.87. An identical Notice of Deficiency was issued to Margaret S. McLean on the same day.

4. Petitioner Malcolm P. McLean owned in excess of 3,500,000 shares of R. J. Reynolds Industries, Inc., \$2.25 convertible preferred stock ("Reynolds stock"), which he had acquired in a transaction governed by and subject to the restrictions of Rule 133 of the General Rules and Regulations of the Securities and Exchange Commission under the Securities Act of 1933 (17 CFR 230.133).

5. The restrictions of Rule 133 limit the public sale of petitioners' Reynolds stock to transactions with brokers where no direct or indirect solicitation is made for orders to buy and where the total number of shares of Reynolds stock subject to the same restrictions and publicly sold in the six month period prior to such sale does not exceed the lesser of (a) one percent of the Reynolds stock outstanding at the time of receipt by the broker of the sale order or (b) the largest aggregate reported volume of trading on security exchanges of the Reynolds stock during any one week within the four calendar weeks preceeding the receipt by the broker of the sale order. These restrictions also apply to Reynolds stock received by others from Malcolm P. McLean and to any common stock received from the conversion of the stock at issue.

6. On April 7, 1972, petitioner Malcolm P. McLean made a gift of 20,000 shares of Reynolds stock to a trust that he had established. On July 26, 1972, petitioner Malcolm P. McLean made a further gift of 20,000 shares of Reynolds

Stock to another trust that he had established.

7. Petitioner Margaret S. McLean, Malcolm P. McLean's wife, consented to having both gifts considered as made one-half by her.

8. Reynolds stock is regularly traded on the New York Stock Exchange. On April 7, 1972 the closing price was \$89.25 and on July 26, 1972 the closing price was \$77.25. The range of prices on the New York Stock Exchange by year was as follows:

<u>Year</u>	<u>Low</u>	<u>High</u>
1969	36 1/4	56 1/2
1970	34	60 3/4
1971	53	81 3/4
1972	50	94

9. The trading volumes of Reynolds stock during the two month periods spanning the gifts was as follows:

<u>April 7 Gift</u>		<u>July 26 Gift</u>	
<u>Week Ended</u>	<u>Shares Traded</u>	<u>Week Ended</u>	<u>Shares Traded</u>
3/11/72	23,300	7/1/72	2,200
3/18/72	66,800	7/8/72	1,800
3/25/72	19,800	7/15/72	5,000
4/1/72	10,100	7/22/72	4,300
4/8/72	8,600	7/29/72	2,200
4/15/72	16,800	8/5/72	7,100
4/22/72	13,000	8/12/72	2,800
4/29/72	12,000	8/19/72	5,700

10. Petitioners discounted the New York Stock Exchange closing prices on the taxes of the gifts by 10 percent.

11. The Reynolds stock could have and can be registered under the Securities Act of 1933. If this had been done or is done, the restrictions of Rule 133 would not be applicable.

#### CONCLUSIONS OF LAW

A. That petitioners have failed to show by persuasive evidence that the block of stock to be valued is so large in relation to the actual sales on the existing market that the block could not be liquidated in a reasonable time

without depressing the market or resulting in a substantial loss.

B. That petitioners are entitled to a discount reflecting the legal, accounting and Securities and Exchange Commission registration costs reasonably necessary to remove Rule 133 restrictions on the herein involved stock. This is not a discount for selling expenses (for example brokerage commissions or underwriter fees) but is a discount reflecting the cost of removing the Rule 133 restrictions providing the subject stock with unlimited transferability. (See: Ltr. Rul. 7924010, Prentice Hall Federal Taxes ¶ 142,320.)

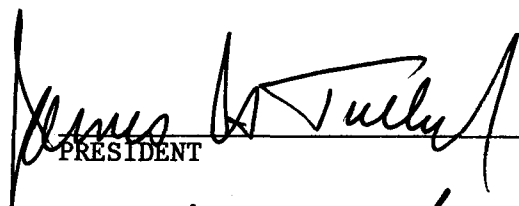
C. That the Audit Division is directed to determine the reasonable cost necessary to remove the Rule 133 restrictions from the gifted stock. This amount, not to exceed 10 percent of the closing price of Reynolds stock, is to be deducted from the closing price to determine the value of the taxable gifts at issue.

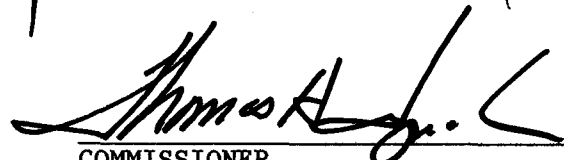
D. That except as provided in Conclusion of Law "B" and "C" the petitions of Malcolm P. McLean and Margaret S. McLean are denied and the notices of deficiency are sustained.

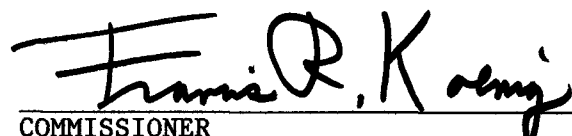
DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER