

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DANIEL E. NOONAN & PATRICIA A. NOONAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Gift Taxes
Taxes under Article (g) 26-A of the
Tax Law for the ~~Year(s) or Period(s)~~
Quarter Ended December 31, 1972.

State of New York
County of Albany

Bruce Batchelor, 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 7th day of June, 19 77, she served the within
Notice of Decision by (certified) mail upon Daniel E. Noonan &
Patricia A. Noonan (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Daniel E. Noonan
61 E. Chesire Place
Staten Island, New York
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

7th day of June, 19 77.

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. & Mrs. Daniel E. Noonan
61 E. Chesire Place
Staten Island, New York

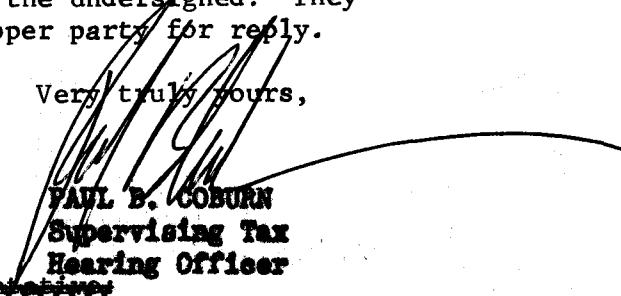
Dear Mr. & Mrs. Noonan:

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

Please take further notice that pursuant to
Section ~~(a)~~ **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: ~~Petitioner's Representative~~
~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DANIEL E. NOONAN and	:	
PATRICIA A. NOONAN	:	DECISION
for a 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.	:	

Petitioners, Daniel E. Noonan and Patricia A. Noonan, residing at 61 E. Chesire Place, Staten Island, New York, have filed an application for a 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. 00619, 00620).

A formal hearing was held before Paul B. Coburn, Esq., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, Room 65-31, on November 3, 1976, at 10:45 A.M. Petitioner, Daniel E. Noonan, appeared pro se, and for his wife, Patricia A. Noonan. The Miscellaneous Tax Bureau appeared by Peter J. Crotty, Esq. (Irwin Levy, Esq. of counsel).

ISSUE

Whether a gift of stock of minority interest of a closely held corporation was properly valuated under Article 26-A of the

Tax Law utilizing a basis of average earnings capitalized at 10% with a 15% discount allowed for lack of marketability for minority interest, rather than limiting such value to book value as agreed by the parties?

FINDINGS OF FACT

1. Statements of audit changes was filed against both petitioners, Daniel and Patricia Noonan, dated March 24, 1975, by the Miscellaneous Tax Bureau, showing an adjusted taxable gift of corporate stock from \$6,305.82 to \$22,009.05, with an additional tax due of \$235.55 against each taxpayer. This was based upon valuating the average earnings of the corporation over a three year period, capitalized at 10%, with a 15% discount for minority interest lack of marketability.

2. Notices of deficiency against both petitioner-taxpayers were filed on August 22, 1975, showing a deficiency of \$235.55 respectively, with interest due respectively of \$44.43, for a total deficiency respectively of \$279.98.

3. A New York State Resident Quarterly Gift Tax Return for the quarter ended December 31, 1972 had been filed by both petitioner-taxpayers, showing an original valuation of taxable gifts for the subject period as \$6,305.82, with a tax paid respectively in the amount of \$94.59.

4. Each petitioner filed a petition for redetermination of deficiency or for refund of tax on the transfer of property by gift under Article 26-A for the quarter ended December 31, 1972.

5. Petitioner submitted a stockholders' agreement for the subject corporation, Daniel E. Noonan, Inc., dated July 6, 1972, with a supplementary agreement dated November 27, 1972, which agreements encompassed the sale of corporate stock as a first offer to the corporation at book value by any holder thereof.

CONCLUSIONS OF LAW

A. That the book value of stock in a closely held corporation does not necessarily reflect its true value, and the Miscellaneous Tax Bureau is not bound by valuations placed upon such stock by private parties.

B. That the method of valuation utilized by the Miscellaneous Tax Bureau, using as a basis the average earnings over a three-year period, capitalized at 10%, with a 15% discount factor for lack of marketability of minority interest, was reasonable and proper under the guiding principles of the Federal Gift Tax Law (I.R.C. Section 2512, 1047; Kraus v. U.S., 140 F.2d 510; Central Trust Co. v. U.S., 305 F.2d 393). Petitioners have failed to

sustain their burden to show that the method of valuation was erroneous, and that the method they used was proper Kraus v. U.S., supra.

C. That accordingly, in all respects the petitions for redetermination of a deficiency are denied.

DATED: Albany, New York

June 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER