

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK RANDAZZO

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

John Huhn , 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 14th day of February , 19 79, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Frank Randazzo

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Frank Randazzo  
21 Cabot Road West  
Massapequa, NY 11762

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)~~  
~~xxxxx~~ 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

14th day of February , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK RANDAZZO

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

John Huhn , 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 14th day of February , 1979 , he served the within  
Notice of Decision by (certified) mail upon Lowell Blum, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Lowell Blum, Esq.  
3349 Park Avenue, P.O. Box 91  
Wantagh, L.I., NY 11703

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

14th day of February , 1979.

Marilyn J. Papineau

John Huhn



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

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

**February 14, 1979**

**Frank Randazzo  
21 Cabot Road West  
Massapequa, NY 11762**

**Dear Mr. Randazzo:**

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 ~~xx~~ **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,

*Michael Alexander*  
**Michael Alexander  
Supervising Tax  
Hearing Officer**

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	:	
FRANK RANDAZZO	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Gift Taxes under Article	:	
26-A of the Tax Law for the Quarter	:	
Ending March 31, 1972.	:	

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Petitioner, Frank Randazzo, 21 Cabot Road West, Massapequa, New York 11762, 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 ending March 31, 1972 (File No. 00165).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 17, 1977 at 3:50 P.M. Petitioner appeared by Lowell Blum, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy Esq., of counsel).

ISSUE

Whether the transfer of real property by petitioner to his wife constituted a gift and, thus, made it subject to tax.

FINDINGS OF FACT

1. On June 26, 1974, the Miscellaneous Tax Bureau issued a Statement of Audit Changes against petitioner, Frank Randazzo, for the quarter ending March 31, 1972 in the amount of \$687.00, plus penalty and interest of \$258.93, for a total of \$945.93. This was done on the grounds that a gift of real property was made to

Roselyn Randazzo on February 15, 1972. Accordingly, the Bureau issued a Notice of Deficiency against petitioner on March 10, 1975.

2. In 1963 petitioner purchased a residence for himself and his family for \$25,200.00, with a mortgage of approximately \$17,200.00. In the early part of 1972, petitioner anticipated a reversal in his business endeavors. On his attorney's advice and in order to protect his home, he transferred title to the home to his wife, Roselyn Randazzo on February 15, 1972. The deed conveying the house was duly recorded on February 23, 1972. Simultaneous to the transfer of title by deed, petitioner's wife, Roselyn Randazzo, signed a deed transferring title of the property back to her husband, Frank Randazzo. This deed was eventually recorded on May 11, 1977, which was subsequent to the running of the statute of limitations on any possible action as a result of his business failure. Nominal consideration was cited in both deeds and no tax stamps were affixed to either deed.

#### CONCLUSIONS OF LAW

A. That a transfer of property is subject to gift tax only if the following requirements are met:

- a. Clear and unmistakeable intent by the donor to make it. A corollary of this element is an absence of adequate consideration.
- b. A conveyance or transfer sufficient to vest legal title in the donee without power of revocation at the will of the donor.
- c. Relinquishment of dominion and control of the gift property by delivery to the donor.
- d. Acceptance by the donee. (United States v. Schroeder, 348 F 2d 223, Tyson v. Com. 146F 2d 50, Edson v. Lucas 40F 2d 398, Est. of Crawly, T.C. memo 3/30/50.)

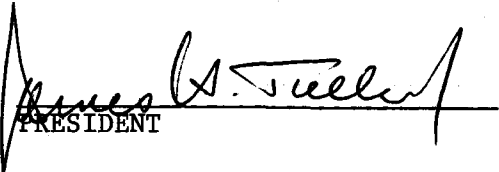
B. That since these requirements were not met, a gift was not made by petitioner, Frank Randazzo, to his wife, Roselyn Randazzo; therefore, no gift tax return was required.


C. That the petition of Frank Randazzo is granted and the Notice of Deficiency issued March 10, 1975 is cancelled.

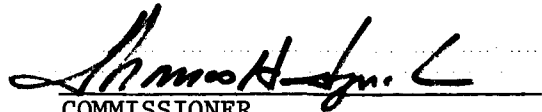
DATED: Albany, New York

February 14, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER