

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Estate of Mary Saraszewski :  
and George and William Grupinski, Grantees :  
: 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 Quarter Ended :  
12/31/75.

\_\_\_\_\_  
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 31st day of July, 1981, he served the within notice of Decision by certified mail upon Estate of Mary Saraszewski, and George and William Grupinski, Grantees the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Mary Saraszewski  
and George and William Grupinski, Grantees  
c/o James F. Cosgrove  
666 Old Bethpage Rd.  
Old Bethpage, NY 11804

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  
31st day of July, 1981.

*Ann R. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Estate of Mary Saraszewski :  
and George and William Grupinski, Grantees : AFFIDAVIT OF MAILING  
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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 Quarter Ended :  
12/31/75. :

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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 31st day of July, 1981, he served the within notice of Decision by certified mail upon John A. Dowd the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John A. Dowd  
Forman, Kingston, Kops & Dowd  
290 Old Country Rd.  
Mineola, NY 11501

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  
31st day of July, 1981.


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

July 31, 1981

Estate of Mary Saraszewski  
and George and William Grupinski, Grantees  
c/o James F. Cosgrove  
666 Old Bethpage Rd.  
Old Bethpage, NY 11804

Dear Mr. Grupinski:

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) 690 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  
John A. Dowd  
Forman, Kingston, Kops & Dowd  
290 Old Country Rd.  
Mineola, NY 11501  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
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 of :  
 :  
 ESTATE OF MARY SARASZEWSKI, : DECISION  
 GEORGE F. and WILLIAM R. GRUPINSKI, GRANTEES :  
 :  
 for Redetermination of a Deficiency or :  
 for Refund of Gift Tax under Article 26A :  
 of the Tax Law for the Quarter Ended :  
 December 31, 1975. :  
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Petitioner, Estate of Mary Saraszewski, George F. and William R. Grupinski, Grantees, c/o John A. Dowd, Esq., Forman, Kingston, Kops & Dowd, 290 Old Country Road, Mineola, New York 11501, filed a petition for redetermination of a deficiency or for refund of gift tax under Article 26A of the Tax Law for the quarter ended December 31, 1975 (File No. 18959).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 8, 1981 at 11:20 A.M. Petitioner appeared by John A. Dowd, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Michael Gitter and Andrew Haber, Esqs., of counsel).

ISSUE

Whether there was a gift from Mary Saraszewski to George F. and William R. Grupinski.

FINDINGS OF FACT

1. On May 9, 1977, the Audit Division issued a Statement of Audit Changes against the Estate of Mary Saraszewski for the quarter ended December 31, 1975, imposing \$1,740.00 in gift tax, plus \$185.19 in interest, for a total due of \$1,925.19. Said Statement provided, in part, as follows: "Transfer of

real property (estimated market value \$100,000) on or about October 17, 1975 to two sons. Transfer during decedent's life for less than full and adequate consideration is subject to the Gift Tax Law."

2. The Audit Division granted three extensions (to and including May 15, 1976 through November 15, 1976) to file a gift tax return for Mary Saraszewski.

3. Mary Saraszewski, formerly known as Mary Grupinski, by deeds dated October 17, 1975, conveyed to her sons, George F. and William R. Grupinski, two parcels of real property, namely, 9 Old Broadway, Garden City Park, New York and 57 Mineola Avenue, Roslyn Heights, New York. George F. Grupinski was uncertain as to the recordation of the deeds. At the time of this transaction, Mrs. Saraszewski was 65 years old and terminally ill with cancer. Her sons paid no consideration for the said properties.

4. Petitioner asserts that no gift was intended at the time of transfer of said properties to decedent's sons, the grantees. It was alleged that only legal title was conveyed to the grantees and decedent retained beneficial title to the said properties based on the following factors: she continued to reside at 57 Mineola Avenue, Roslyn Heights, New York and it was understood at the time of transfer that net rental income from said properties would be used to defray the decedent's living and medical expenses which were substantial.

5. Matski Corporation, Inc., a corporation wholly owned by George F. Grupinski, was a "tenant" in the premises known as 57 Mineola Avenue, Roslyn Heights, New York and in accordance with an oral agreement with Mrs. Saraszewski, continued to pay rent to her. Mr. Grupinski contended that he paid the real estate taxes on the said transferred properties with his mother's money. After the petitioner's death, one of the said properties was sold in order to pay decedent's medical expenses which amounted to \$15,912.85.

6. George F. and William R. Grupinski did not take a tax deduction for any of the expenses of the said properties on their partnership tax returns until after their mother's death.

7. Mary Sarazewski died on July 27, 1976. In a petition to determine estate tax under Article 26 of the Tax Law, dated September 20, 1978, and filed in Surrogate's Court, County of Nassau, on behalf of the Estate of Mary Saraszewski, the real property at issue was included as property of the decedent with a value of \$11,300.00; and the following applicable language appears on Schedule I relating to New York real property:

"The decedent transferred the above properties to her sons, George F. and William R. Grupinski on October 17, 1975. At the time of said transfer decedent was terminally ill with cancer and the purpose of the transfer was to avoid probate expenses. All net income from the property was used for the benefit of the decedent."

8. In the Order of Surrogate John D. Bennett, dated November 1, 1978, in Nassau County Surrogate's Court, the net New York Estate tax of the Estate of Mary Saraszewski was fixed as follows:

New York gross estate.....	\$113,950.16
New York estate tax deductions.....	21,734.80
New York taxable estate.....	92,215.36
New York gross estate tax.....	2,266.46
Credits against estate tax.....	253.00
New York net estate tax.....	<u>\$ 2,013.46</u>

#### CONCLUSIONS OF LAW

A. That the transfer in question is deemed not to be a gift for purposes of Article 26A of the Tax Law.

A copy of the petition to determine New York estate tax was required to be served on the attorney for the State Tax Commission at the time the estate tax proceeding was commenced in Surrogate's Court, Nassau County.

Since the order fixing tax was signed, it is presumed that such service was made.

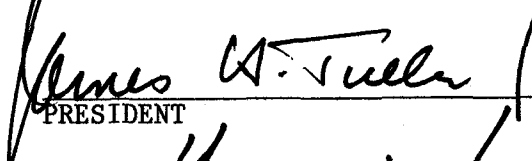
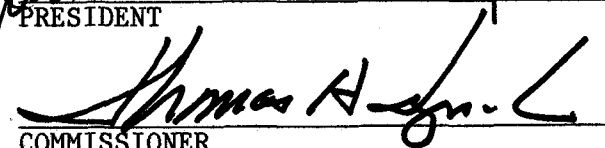
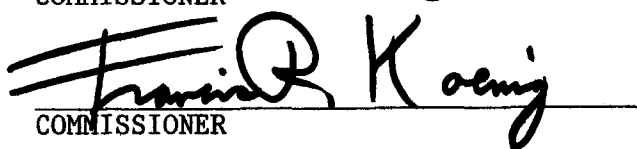
In the petition, the real property was treated as part of the Estate of Mary Saraszewski for estate tax purposes and no credit for gift tax was claimed. If the Audit Division was to take exception to this treatment, it should have done so in the estate tax proceeding. It is noted that even if Mrs. Saraszewski had filed a gift tax return and paid gift tax, said gift tax would have been credited against the estate tax.

The purpose of the gift tax is to prevent taxpayers from avoiding estate tax by giving away their property; it is not the purpose of the gift tax to impose what amounts to double taxation on the same property.

B. That the petition of the Estate of Mary Saraszewski, George F. and William R. Grupinski, Grantees, is granted and the Notice of Deficiency, if issued,\* is cancelled.

DATED: Albany, New York  
JUL 31 1981

STATE TAX COMMISSION

  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER

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\* The Notice of Deficiency was never introduced into evidence at the formal hearing.