

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
George D. Christophides (Dec'd)	:	
and Alexandra G. Christophides	:	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 Period 3/31/79.	:	

State of New York
County of Albany

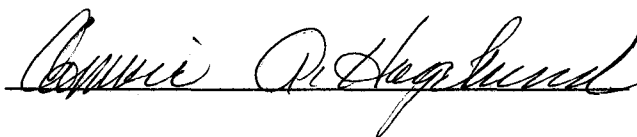
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon George D. Christophides (Dec'd) and Alexandra G. Christophides, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


George D. Christophides (Dec'd)
and Alexandra G. Christophides
150-17 33rd Avenue
Flushing, NY 11354

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
15th day of July, 1983.




AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George D. Christophides (Dec'd) :
and Alexandra G. Christophides :
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 Period 3/31/79. :
:

State of New York
County of Albany

Connie Hagelund, 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 15th day of July, 1983, she served the within notice of Decision by certified mail upon Costa Papson the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

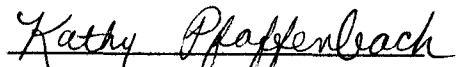
Costa Papson
500 Fifth Ave.
New York, NY 10036

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
15th day of July, 1983.




AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

July 15, 1983

George D. Christophides (Dec'd)
and Alexandra G. Christophides
150-17 33rd Avenue
Flushing, NY 11354

Dear Mrs. Christophides:

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 & 1007 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 Law 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
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Costa Papson
500 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE D. CHRISTOPHIDES (deceased)	:	DECISION
AND ALEXANDRA G. CHRISTOPHIDES	:	
	:	
for Redetermination of a Deficiency or for	:	
Refund of Gift Tax under Article 26-A of the	:	
Tax Law for the Quarter Ending March 31, 1979.	:	

Petitioners, George D. Christophides (deceased) and Alexandra G. Christophides, 150-17 33rd Avenue, Flushing, New York 11354, filed a petition for redetermination of a deficiency or for refund of gift tax under Article 26-A of the Tax Law for the quarter ending March 31, 1979 (File Nos. 32576 and 32577).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on January 10, 1983, with all briefs to be submitted on or before March 7, 1983. Petitioner appeared by Costa L. Papson, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the reservation for the wife of a life estate in certain real property given by a husband and wife to their children, amounts to a gift from the husband to the wife, where the property was owned by them as tenants by the entirety, but where the husband had supplied all of the consideration at the time of purchase.

FINDINGS OF FACT

1. Petitioners, George D. Christophides and Alexandra G. Christophides, were the owners, as tenants by the entirety, of two parcels of land and the

houses thereon. One parcel was located in Southold, New York and the other parcel was located in Queens, New York. George D. Christophides provided all of the consideration when the parcels were originally purchased. The creation of the tenancies by the entirety were not treated as gifts from George D. Christophides to his wife.

2. On February 13, 1979, petitioners made a gift of the parcel of land and house located in Southold, New York to their son Orestes G. Christophides. Each petitioner retained a life estate in the house and property conveyed.

3. Also on February 13, 1979, petitioners made a gift of the parcel of land and house located in Queens, New York to their son Demetrios G. Christophides. Each petitioner retained a life estate in the house and property conveyed.

4. On February 20, 1980, petitioners each filed a separate New York State Resident Quarterly Gift Tax Return for the quarter ending March 31, 1979. On each return each petitioner reported one-half the value of the gifts to their sons.

5. On November 10, 1980 the Audit Division issued a Notice of Deficiency to George D. Christophides which asserted a deficiency of gift tax in the amount of \$409.66 plus penalty of \$201.83 and interest of \$75.75 for a total amount of \$687.24. The Statement of Audit Changes stated, to the extent relevant herein, that the market values of the real property as reported on the returns was accepted. However, the value of the gifts consisted of the present value of the remainder interest in both parcels conveyed and the present value of the life estate of the wife. The Statement of Audit Changes also explained that if documentation of the wife's contribution to the equity of both properties was submitted, the assessment would be recomputed by taking the wife's contribution into account. Lastly, the Statement of Audit Changes stated that penalty and interest were imposed because of late filing and payment.

6. On November 10, 1980 the Audit Division also issued a Notice of Deficiency to Alexandra G. Christophides which asserted a deficiency of gift tax of \$154.83 plus interest of \$43.35 and penalty of \$138.12 for a total amount due of \$336.30. The Statement of Audit Changes explained, in substance, that since an election to split the gift was made, she was responsible for gift tax valued at one-half the remainder interest in the real property.

7. At the time the gift tax returns were due, both petitioners were ill. George D. Christophides was then ninety-five years old and Alexandra G. Christophides was eighty-three years old. The gift tax returns were prepared within the time prescribed by law. However, there was delay in executing and remitting payment due to petitioners' ages and illnesses.

8. At the hearing, petitioners' representative argued that since Alexandra G. Christophides owned each of the parcels as a tenant by the entirety prior to the conveyances to her sons, the reservation of a life estate in each deed did not constitute a gift by George D. Christophides to Alexandra G. Christophides.

CONCLUSIONS OF LAW

A. That, during the quarter in issue, section 1009 of the Tax Law provided that certain gift tax provisions of the United States Internal Revenue Code of 1954 as amended through December 31, 1971, were to apply to the determination of New York gift tax to the extent specified in Article 26-A of the Tax Law. Section 2515 of the Internal Revenue Code was one of such provisions.

B. That subdivision (a) of section 2515 of the Internal Revenue Code provided:

"(a) Creation - The creation of a tenancy by the entirety in real property, either by one spouse alone or by both spouses, and additions to the value thereof in the form of improvements, reductions in the indebtedness thereon, or otherwise, shall not

be deemed transfers of property for purposes of this chapter, regardless of the proportion of the consideration furnished by each spouse, unless the donor elects to have such creation of a tenancy by the entirety treated as a transfer, as provided in subsection (c)."

C. That subdivision (c) of section 2515 of the Internal Revenue Code provided:

"(c) Exercise of election - The election provided by subsection (a) shall be exercised by including such creation of a tenancy by the entirety or additions made to the value thereof as a transfer by gift, to the extent such transfer constitutes a gift, determined without regard to this section, in the gift tax return of the donor for the calendar year in which such tenancy by the entirety was created or additions made to the value thereof, filed within the time prescribed by law, irrespective of whether or not the gift exceeds the exclusion provided by section 2503(b)."

George D. Christophides did not elect to treat the creation of the tenancy by the entirety as a transfer within the meaning of subdivision (c) of section 2515 of the Internal Revenue Code (Finding of Fact "1").

D. That subdivision (b) of section 2515 of the Internal Revenue Code provided:

"(b) Termination - In the case of the termination of a tenancy by the entirety, other than by reason of the death of a spouse, the creation of which, or additions to which, were not deemed to be transfers by reason of subsection (a), a spouse shall be deemed to have made a gift to the extent that the proportion of the total consideration furnished by such spouse multiplied by the proceeds of such termination (whether in form of cash, property, or interest in property) exceeds the value of such proceeds of termination received by such spouse."

The conveyances in issue resulted in the termination of the tenancy by the entirety (see generally, 24 NY Jur. 2d, Cotenancy and Partition, §51). Therefore, the provisions of subdivision (b) of section 2515 of the Internal Revenue Code are applicable. Since petitioners could have distributed the proceeds arising from the disposition of the parcels in question in any manner

they chose upon the termination of the tenancy by the entirety, each petitioner is deemed to have received that portion of the proceeds of the jointly held property which that petitioner reported as his or her respective gift to the third party [C. Lowndes, R. Kramer, J. McCord, Federal Estate and Gift Taxes, §30.7 (1974); Reg. §25.2515-1(d)(3)(i)]. Moreover, George D. Christophides also made a gift to Alexandra G. Christophides since the gifts to their sons also terminated the tenancies by the entirety and constituted distributions of the proceeds from the jointly held property (C. Lowndes, R. Kramer, J. McCord, Federal Estate and Gift Taxes, supra). Therefore, George D. Christophides was properly deemed to have made a gift, not only to his sons, Orestes G. Christophides and Demetrios G. Christophides, but also to his wife [I.R.C. §2515(b); see Treas. Reg. § 25.2515-1(d)(3)(i)].

E. That it was proper to issue a Notice of Deficiency to Alexandra G. Christophides since, upon electing split gifts, there is joint and several liability for the gift tax [Tax Law §1007(d); IRC §2513(d)].

F. That the failure of petitioners to timely file the returns was due to reasonable cause and not willful neglect. Therefore, the penalty is cancelled [Tax Law §685; 1007(b)].

G. That the New York Gift Tax Law does not provide for the waiver of interest.


H. That the petition of George D. Christophides (deceased) and Alexandra G. Christophides is granted only to the extent of Conclusion of Law "F", and

the Audit Division is directed to modify the Notices of Deficiency issued on November 11, 1980 accordingly; the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983


PRESIDENT


COMMISSIONER


COMMISSIONER