

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of John K. & Florence Colgate :
AFFIDAVIT OF MAILING :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Gift Tax under :
Article 26A of the Tax Law for the Quarter Ended :
12/31/76. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 30th day of October, 1985, he served the within notice of Decision by certified mail upon Estate of John K. & Florence Colgate, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of John K. & Florence Colgate
c/o Barry Kessler - Touche, Ross & Co.
1633 Broadway
New York, NY 10019

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
30th day of October, 1985.

David Parchuck

James A. Heglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of John K. & Florence Colgate :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Gift Tax under :
Article 26A of the Tax Law for the Quarter Ended :
12/31/76. :
:

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 30th day of October, 1985, he served the within notice of Decision by certified mail upon George H. P. Dwight, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George H. P. Dwight
Richards, O'Neil & Allegaert
660 Madison Avenue
New York, NY 10021

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
30th day of October, 1985.

David Parchuck

James A. Dege
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 30, 1985

Estate of John K. & Florence Colgate
c/o Barry Kessler - Touche, Ross & Co.
1633 Broadway
New York, NY 10019

Gentlemen:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
George H. P. Dwight
Richards, O'Neil & Allegaert
660 Madison Avenue
New York, NY 10021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ESTATE OF JOHN K. COLGATE AND FLORENCE COLGATE : DECISION

for Redetermination of a Deficiency or for :
Refund of Gift Tax under Article 26-A of the
Tax Law for the Quarter Ended December 31, 1976.:

Petitioners, the Estate of John K. Colgate and Florence Colgate, c/o George H. P. Dwight, Esq., 660 Madison Avenue, New York, New York 10021, 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 ended December 31, 1976 (File Nos. 49097 and 49098).

On June 18, 1985, petitioners, by their representative Richards, O'Neil & Allegaert, Esqs. (George H. P. Dwight, Esq., of counsel), waived a hearing before the State Tax Commission and requested the Commission to render its decision, based on the Department of Taxation and Finance file as presently constituted, a stipulation of facts with exhibits executed by petitioners' representative and the Audit Division's representative on June 6, 1985, and briefs to be submitted by August 15, 1985.

ISSUES

I. Whether petitioners received final federal determinations regarding the value of two gifts made of Oakbrook Company stock during the quarter ended December 31, 1976.

II. If so, whether petitioners demonstrated that such final federal determinations were erroneous.

FINDINGS OF FACT

1. On September 15, 1983, the Audit Division issued to petitioner the Estate of John K. Colgate a Notice of Deficiency, asserting gift tax due under Article 26-A of the Tax Law for the quarter ended December 31, 1976 in the principal amount of \$24,211.98, plus accrued interest. On September 15, 1983, the Audit Division issued to petitioner Florence Colgate a Notice of Deficiency, asserting additional gift tax for the same quarter in an identical amount.

2. On or about February 8, 1977, John K. Colgate and his wife, Florence M. Colgate, filed gift tax returns for the calendar quarter ended December 31, 1976, as follows:

(a) Mr. Colgate filed a federal quarterly gift tax return (form 709) which Mrs. Colgate signed to evidence her consent that the gifts made by her and Mr. Colgate be considered as made one-half by each of them.

(b) Mr. Colgate and Mrs. Colgate each filed a New York State Resident Quarterly Gift Tax Return (form MT-730), reporting the same gifts. Attached to the New York returns was a copy of the federal return.

The gifts reported on these federal and New York returns which are in dispute in this proceeding are briefly described below.

<u>Donee and Description of Gift</u>	<u>Donor's Adjusted Basis of Gift</u>	<u>Date of Gift</u>	<u>Reported Value of Gift</u>
John K. Colgate, Jr., Russell C. Wilkinson and Rufus Bullock Trustees u/a 12/16/76 F/B/O descendants of Russell Colgate 120 shs. Oakbrook Company	\$315,626.43	12/17/76	\$1,698,840.00

John K. Colgate, Jr.,
Russell C. Wilkinson
and Rufus Bullock
Trustees u/a 12/17/76
F/B/O descendants of
Russell Colgate

45 shs. Oakbrook Company	118,359.91	12/17/76	637,065.00
--------------------------	------------	----------	------------

3. Mr. Colgate died on October 29, 1978 and letters testamentary were issued by the Surrogate's Court of Nassau County to Florence M. Colgate, John K. Colgate, Jr., and Rufus Bullock, who continue in office to the present time.

4. Mr. Colgate and his sister, Josephine Colgate Wilkinson, were the only surviving children of Russell Colgate, who incorporated Oakbrook Company ("Oakbrook") in 1919. While he lived, Russell Colgate was Oakbrook's sole stockholder. Oakbrook has always been a personal holding company, as defined in the Internal Revenue Code, owning various listed securities, with its principal holding a substantial block of the stock of what is now Colgate-Palmolive Co.

Russell Colgate died in 1941. The principal asset of Russell Colgate's estate was his 775 shares of the capital stock of Oakbrook. His will left three-twelfths of his estate outright to Mr. Colgate and created four trusts of the balance:

(1) Four-twelfths in trust for the life of Josephine Kirtland Colgate, Russell Colgate's widow. When she died in 1967, the principal of the trust was distributed in equal shares to Mr. Colgate and his sister.

(2) Three-twelfths in trust for the life of Mr. Colgate's sister Josephine, remainder on her death to her descendants.

(3) One-twelfth in trust for the life of Mr. Colgate's wife, Florence Manuel Colgate, remainder on her death to Mr. Colgate's descendants.

(4) One-twelfth, collectively, for the grandchildren of Russell Colgate born within twenty-one years after his death, with principal share due at age 21, but distributable when the beneficiary reached age 28. When Russell Colgate died, his son (Mr. Colgate) had three children, the youngest age 2. His sister had not yet married. Her two children were to be the only beneficiaries of this trust: Edith reached 28 in 1972; Russell, in 1976. Each now owns outright 33.5 shares of Oakbrook.

After Russell Colgate's widow died in 1967, 312 shares (40.3 percent) of Oakbrook were owned by Mr. Colgate, 59 shares (7.7 percent) were held in trust for Mrs. Colgate, and the remaining 404 shares were owned by his sister and her children or held in trust for them.

From Russell Colgate's death in 1941 until December, 1976, there were no transfers of Oakbrook's stock except as required to effect the provisions of his will. In December, 1976, Mr. Colgate made the gifts of Oakbrook's stock to two separate trusts. One gift was of 120 shares, or 15.5 percent, of Oakbrook's issued and outstanding stock; the other was of 45 shares, or 5.8 percent.

5. The gifts grew out of an overall reorganization of Oakbrook's operations which began in 1974. This reorganization had two principal objectives: to provide for an orderly transfer of Oakbrook's management from the members of the generation of Mr. Colgate and his sister to the next generation of their children; and as part of that process, to ensure that the ownership of Oakbrook's stock could not be transferred among existing stockholders or to third parties without the approval of both family groups.

The three principal officers of Oakbrook were getting along in years. Mr. Colgate, Mr. George Neupauer (a certified public accountant and former manager of Colgate Estates, a corporation organized to perform administrative

services for family members), and Mr. Wilkinson (Mr. Colgate's brother-in-law) all had retired from active business. The younger generation of Rufus Bullock (Mr. Colgate's son-in-law), John K. Colgate, Jr., and Russell C. Wilkinson had been maturing and emerging as leaders.

In 1974, Rufus Bullock resigned as an executive of First Boston Corporation. With William C. Breed, III, he organized Edgewood Management Company ("Edgewood") as an investment adviser registered under the Investment Advisers Act of 1940, with offices in New York City. Oakbrook became one of Edgewood's first clients. Edgewood also assumed most of the management responsibilities and hired the remaining employees of Colgate Estates. Thereafter, Oakbrook continued only a small office in Jersey City for its treasurer, Mr. Neupauer, and its corporate records.

On Edgewood's recommendation, Oakbrook undertook to consider the advisability of a stockholders' agreement to ensure the continuity of Oakbrook's management and control by restricting its transfer and fixing the value of its stock for any permitted transfer.

6. A major issue which needed to be resolved before an agreement among the stockholders could be considered was how to fix the value of Oakbrook's stock. Oakbrook, which had not had an independent audit of its operation for many years, engaged Touche Ross & Co. ("Touche Ross") to conduct an audit for the year ending December 31, 1975. Touche Ross submitted its report in early 1976. At about the same time, Oakbrook engaged Standard Research Consultants ("SRC") to appraise the value of its stock. The two families intended that this appraisal by a well-known independent appraiser of stock of closely-held corporations could serve as a basis for a formula to fix the stock's value in a stockholders' agreement.

SRC completed its appraisal in October, 1976. It determined that the fair market value of a noncontrolling block of Oakbrook stock was \$14,145.00 per share. This represented the net asset value per share at market of the securities held in Oakbrook's portfolio, less a 57.8 percent discount. In mid-December, SRC reviewed its determination and confirmed that the value fixed by the earlier appraisal remained the fair market value of a share of Oakbrook stock. This appraisal was first used to provide a basis for a purchase price formula included in the agreement dated December 3, 1976 among Oakbrook and its stockholders. It was then used by petitioners to determine the value of the gifts reported on their federal and New York gift tax returns filed for the quarter ended December 31, 1976.

7. In January, 1979, the Internal Revenue Service commenced an examination of petitioners' federal gift tax return for the quarter ended December 31, 1976. During extensive discussions with representatives of the Service, petitioners' representatives provided the appraisal prepared by SRC, a letter dated December 17, 1976 from SRC confirming its opinion that the indicated overall discount from net asset value (at market) to arrive at the fair market value of a noncontrolling block of stock of Oakbrook as of that date continued to 57.8 percent, and a list of the stockholders of Oakbrook as of December 17, 1976.¹ The Service decided to close the audit without reaching an agreement with petitioners concerning adjustment of their tax liability and to propose additional gift tax against petitioners.

1 Harry H. Ness, then a vice-president of SRC, participated in the preparation of the appraisal. Mr. Ness is an expert on valuation of the gifts, and, but for the parties' stipulation, would have been available as an expert to testify on behalf of petitioners.

8. On or about November 9, 1981, petitioners filed a protest with the Service. In January, 1982, at an informal meeting between petitioners' representatives and an appeals officer of the Service, it was agreed to settle petitioners' liability by using a discount of 45 percent from the net asset value (at market) of Oakbrook to determine the fair market value of the gifts, instead of the 57.8 percent discount used by petitioners in their return, and instead of the 15 percent discount used by the Service in its examination reports following the audit.

9. On or about March 8, 1982, at the request of the Service, Touche Ross delivered to the Service two offers of waiver of restrictions on assessment and collection of deficiency in tax and of acceptances of overassessment (form 870-AD), one executed by Mrs. Colgate and the second by Florence M. Colgate and Rufus Bullock, as executors of Mr. Colgate's estate. Each form provided, in pertinent part:

"If this offer is accepted for the Commissioner, the case shall not be reopened in the absence of fraud, malfeasance, concealment or misrepresentation of material fact, an important mistake in mathematical calculation, or excessive tentative allowances of carrybacks provided by law; and no claim for refund or credit shall be filed or prosecuted for the year(s) stated above other than for amounts attributed to carrybacks provided by law."

The deficiencies were paid at the same time. No closing agreement (Code section 7121) was entered into by petitioners and the Service.

10. On or about March 24, 1982, Richards, O'Neil & Allegaert received a Statement of Tax Due on Federal Tax Return (form 3552) on behalf of each petitioner. On or about April 9, 1982, Touche Ross, on behalf of each petitioner, transmitted to the Service full payment of the interest noted on Form 3552.

11. On or about April 28, 1982, Touche Ross advised the Audit Division in writing of the federal determinations respecting petitioners' gift tax return for the quarter ended December 31, 1976. The written notice stated:

"We do not concede the accuracy of this determination, which is erroneous in that taxpayer's valuation of the gifts in dispute was based on a written appraisal prepared at the time the gifts were made."

The deficiencies under review herein were predicated solely upon the federal determinations; the Audit Division conducted no independent review of petitioners' New York gift tax returns.

CONCLUSIONS OF LAW

A. That subsection (a) of Tax Law section 1006 provides, in part:

"A final federal determination that a transfer constitutes a taxable gift and of the value thereof...shall also, subject to the modifications provided for by this article, determine the same issues for purposes of the tax under this article, unless such final federal determination is shown by a preponderance of the evidence to be erroneous."

Where, for example, the Internal Revenue Service finally determines the value of a taxable gift, such determination fixes the value for Article 26-A purposes as well, unless the taxpayer demonstrates the determination was in error. This conformity is designed to promote simplicity and clarity.

Subsection (b) of the same section defines the term "final federal determination" to include, inter alia:

"An assessment pursuant to a waiver of restrictions on assessment, or a notification in writing issued by the secretary of the treasury or his delegate that the federal gift tax return has been accepted as filed, unless the donor shall have filed with the tax commission a written statement, in such form as may be required by the commission, that a claim for refund of federal gift taxes has been or will be filed." Section 1006(b)(4).

The statutory language is unambiguous. In the absence of any proof that petitioners filed a refund claim for the federal gift taxes, the waivers of

restrictions on assessment executed by them constituted final federal determinations.


B. That petitioners failed to demonstrate that the final federal determinations were erroneous. In this proceeding, they relied exclusively upon the SRC appraisal to establish the valuation of the gifts, the very same information submitted to and considered by the Internal Revenue Service in arriving at the federal determinations. To accept petitioners' argument, that the same evidence must be re-evaluated by this Commission, would deprive the federal determinations of their finality and render section 1006 meaningless.

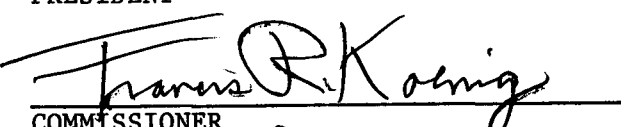
C. That the petition of the Estate of John K. Colgate and Florence Colgate is denied, and the notices of deficiency issued against them on September 15, 1983 are sustained.

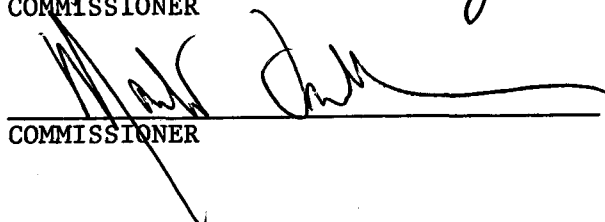
DATED: Albany, New York

OCT 30 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER