

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Estate of Elizabeth Demong :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Gift Tax under :  
Article 26A of the Tax Law for the Year 1977. :  
AFFIDAVIT OF MAILING

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State of New York :

ss.:

County of Albany :

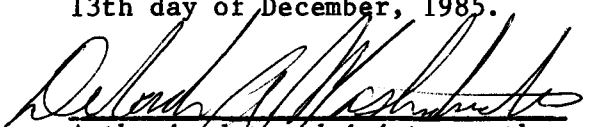
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Estate of Elizabeth Demong, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Elizabeth Demong  
c/o Mary Louise Demong, Executrix  
1062 Westmoreland Avenue  
Syracuse, NY 13210

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  
13th day of December, 1985.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



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AFFIDAVIT OF MAILING

State of New York :  
ss.:  
County of Albany :


Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Norbert F. Abend, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norbert F. Abend  
205 S. Townsend St.  
Syracuse, NY 13202

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  
13th day of December, 1985.

  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
\_\_\_\_\_  
Connie A. Hagelund

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

December 13, 1985

Estate of Elizabeth Demong  
c/o Mary Louise Demong, Executrix  
1062 Westmoreland Avenue  
Syracuse, NY 13210

Dear Ms. Demong:

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  
Norbert F. Abend  
205 S. Townsend St.  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
ESTATE OF ELIZABETH DEMONG  
for Redetermination of a Deficiency or for  
Refund of Gift Tax under Article 26-A of the  
Tax Law for the Year 1977.

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DECISION

Petitioner, Estate of Elizabeth Demong, c/o Mary Louise Demong, 1062 Westmoreland Avenue, Syracuse, New York 13210, filed a petition for redetermination of a deficiency or for refund of gift tax under Article 26-A of the Tax Law for the year 1977 (File No. 42386).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 9, 1985 at 3:00 P.M. Petitioner appeared by Norman F. Abend, Jr., Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined the value of parcels of real property transferred as a gift.

FINDINGS OF FACT

1. On or about March 21, 1977, Elizabeth R. Demong transferred to G. Paul Demong two parcels of real property located in Syracuse, New York.
2. On or about April 7, 1980, petitioner filed a New York State Resident Quarterly Gift Tax Return reporting the transfer of March 21, 1977. On this return, petitioner reported gift tax due of \$180.00 based upon a valuation of

the property gifted at \$15,000.00. However, petitioner did not remit payment of the \$180.00 until on or about July 28, 1980.

3. On May 25, 1982, the Audit Division issued a Notice of Deficiency asserting that petitioner had a deficiency of gift tax in the amount of \$705.00, plus penalty of \$203.25 and interest of \$344.21, for a total of \$1,252.46. In order to determine the amount of gift tax alleged to be due, the Audit Division started with the 1974 assessed value of \$16,000.00 on both properties and multiplied that amount by the equalization rate. The value of the gift was also adjusted for an assumed appreciation in the value of the property from the date the property was assessed in 1974 to the date of the transfer in 1977. The foregoing resulted in an estimated fair market value of the gifted properties of \$59,000.00. The gift tax asserted to be due took into account the previous payment of \$180.00. The penalty and interest were asserted for late filing of the gift tax return and late payment of the gift tax due.

4. One of the parcels of land which was conveyed was located on the corner of Hickory Street and Pearl Street in Syracuse. This was a vacant lot which contained just dirt, gravel and grass.

5. The second lot which was conveyed was located at 408-410 Pearl Street in Syracuse. This parcel of land contained a two-story brick building.

6. The building at 408-410 Pearl Street suffered serious deterioration from the time it was assessed in 1974 until the time it was gifted in 1977. In 1976, the roof of the building caved in.

7. At the time Mr. Demong received the building in 1977, the defects included the caved-in roof noted above, holes in the second floor, some as large as ten to twelve square feet, leading down to the first floor, and erosion of the foundation.

8. After the gift was made, Mr. Demong, who was the donee of the gift, received a letter from the City of Syracuse stating that he had to either tear the building down or have the building repaired. In 1978, Mr. Demong had the building renovated at a cost of approximately \$60,000.00. The renovation consisted of removing the second floor, putting on a new roof and taking steps to repair the erosion in the basement.

9. If Mr. Demong had decided to raze the building, it would have cost approximately \$20,000.00. It would have cost an additional \$10,000.00 to fill the hole in and level it off.

10. Although the parcel of property that contained the building was in a commercial area, it was not a highly valuable commercial area.

11. The valuation placed on the gift by petitioner arose from a real estate appraisal of the properties. Petitioner's appraiser substantially discounted the value of the building because of the building's poor condition.

#### CONCLUSIONS OF LAW

A. That Internal Revenue Code §2512(a), which is applicable herein by virtue of Tax Law §1009, provides, in part:

"If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift."

B. That during the period in issue, Treas. Reg. §25.2512-1 provided, in part:

"Section 2512 provides that if a gift is made in property, its value at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts... Property shall not be returned at the value at which it is assessed for local tax purposes unless that value represents the fair market value thereof on the date of the gift."

C. That in view of the fact that the property had diminished in value from the time it was assessed to the time of the gift, as evidenced by the fact that the roof had caved in and the other facts and circumstances presented herein, petitioner has established that the value of the properties gifted in 1977 was \$15,000.00.


D. That in view of the delay in filing a gift tax return and making payment thereon, the Audit Division properly imposed penalty and interest (Tax Law §1007[a]; 1007[b]).

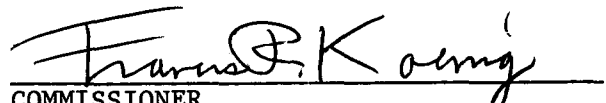
E. That the petition of the Estate of Elizabeth Demong is granted to the extent of Conclusion of Law "C" and the Audit Division is directed to modify the Notice of Deficiency accordingly; the petition is, in all other respects, denied.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER