

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Minnie Nathanson : 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 Quarterly Period:  
Ended 6/80. \_\_\_\_\_

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 20th day of January, 1984, he served the within notice of Decision by certified mail upon Minnie Nathanson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Minnie Nathanson  
799 Park Avenue  
New York, NY

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  
20th day of January, 1984.

David Parchuck

Constance P. Hapner  
pursuant to Tax Law section 174

Authorized to administer oaths

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Minnie Nathanson : 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 Quarterly :  
Period Ended 6/80.

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

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 20th day of January, 1984, he served the within notice of Decision by certified mail upon Sidney Witaskin, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sidney Witaskin  
305 Northern Blvd.  
Great Neck, NY 11021

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  
20th day of January, 1984.

Daniel Paroluck

Christie A. Haglund  
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 20, 1984

Minnie Nathanson  
799 Park Avenue  
New York, NY

Dear Ms. Nathanson:

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  
Sidney Witaskin  
305 Northern Blvd.  
Great Neck, NY 11021  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MINNIE NATHANSON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Gift Tax under Article 26-A of the	:	
Tax Law for the Quarterly Period Ended June,	:	
1980.	:	

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Petitioner, Minnie Nathanson, 799 Park 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 quarterly period ended June, 1980 (File No. 35003).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 11, 1983 at 11:45 A.M., with all briefs to be submitted by November 25, 1983. Petitioner appeared by Sidney Witaskin, CPA. The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed a blockage discount of ten percent applied by petitioner in valuing the gifts at issue.

FINDINGS OF FACT

1. On or about August 19, 1980, petitioner, Minnie Nathanson, filed a New York State Resident Quarterly Gift Tax Return for the calendar quarter ended June, 1980, wherein she reported having made, on May 22, 1980, six gifts of 7,300 shares each of Georgia Pacific Corp. ("Georgia Pacific") Series A convertible preferred stock to six irrevocable charitable lead interest trusts. On the

theory that if the amount of shares donated had been sold within a short period (and having regard to the amount of trading in this stock), the market would have been overloaded and the price depressed, petitioner discounted the market price of the stock by ten percent and valued the gifts as shown below.

Prices of shares, New York Stock Exchange, May 22, 1980	\$ 31 3/4
Number of shares donated 7,300 x 6	43,800
Total value	\$1,390,650
Less 10% discount	\$ (139,065)
Total gifts	<u>\$1,251,585</u>
Charitable annuity interest	<u>\$1,052,100</u>
Remainder interest (taxable)	<u>\$ 199,485</u>

Petitioner calculated and remitted gift tax in the sum of \$9,173.00.

2. On June 16, 1981, the Audit Division issued to petitioner a Notice of Deficiency, asserting additional gift tax due under Article 26-A of the Tax Law for the quarter ended June, 1980 in the amount of \$7,301.30, plus interest of \$535.62, for a total due of \$7,836.92. As explained in the Statement of Audit Changes issued on March 10, 1981, the Audit Division disallowed the blockage discount of ten percent, treating each gift separately, and considering the shares to have been traded in the ordinary course of business since the number of shares comprising each gift was less than one week's average trading.

3. Hudson Pulp and Paper Corp. ("Hudson"), acquired by Georgia Pacific in a stock-for-stock transaction sometime in 1978 (discussed infra), was organized by Abraham Mazer, petitioner's grandfather. For many years, the stock of Hudson was entirely owned by the Mazer family. At some point, a public offering was made and a small percentage of stock sold, but the family continued to own approximately 75 to 80 percent of all the outstanding Hudson stock.

4. Sometime in 1978, Hudson was acquired by and amalgamated into Georgia Pacific. In order to effect this reorganization, Georgia Pacific Series A convertible preferred was exchanged with Hudson's shareholders at the rate

of 1.77 shares of preferred A for one share of Hudson. On or before the fifth anniversary of the effective date of the merger, Georgia Pacific was not permitted to purchase, redeem or otherwise acquire any shares of the preferred A. The preferred A is subject to redemption on and after the first day following the fifth anniversary of such effective date, and prior to the tenth anniversary, at \$39.00 per share plus accrued dividends, with the proviso that no redemption is to be effected unless for a period of ten consecutive trading days immediately prior to the giving notice of redemption the average of the last reported sales prices for common is at least equal to 125 percent of the conversion price in effect on the date of notice. On or after the tenth anniversary of the effective date of the merger, the preferred A will be subject to redemption as a whole or in part, as the board of directors may determine, at a price of \$39.00 per share plus accrued dividends. As of December 31, 1979, 4,141,483 shares of Georgia Pacific preferred A were outstanding.

5. Due to the large percentage of ownership by the Mazer family of the Hudson stock and subsequently the Georgia Pacific preferred A, petitioner asserts that the market in said respective stocks was extremely narrow and the float very small. When the specialist firm trading in Hudson received orders from the public, it generally had no alternative but to request members of the Mazer family to sell shares so the firm could fulfill these orders. The parties offered in evidence the following weekly trading figures in Georgia Pacific preferred A for the period May 10 through August 15, 1980, garnered from the New York Times and Wall Street Journal:

<u>Week Ended</u>	<u>No. of Shares Traded</u>	<u>No. of Shares sold by Mazer Family</u>	<u>High</u>	<u>Low</u>	<u>Mean</u>
5/16/80	900		31 5/8	31	31.312
5/23/80	10,800		32 1/2	31	31.75
5/30/80	1,500				
6/6/80	38,100	35,600	32 1/4	32 1/4	32.25
6/13/80	9,500	500	33 3/8	33	33.187
6/20/80	41,200		33	32	32.5
6/27/80	700		32 1/2	33 1/4	32.875
7/4/80	7,000				
7/11/80	2,200				
7/18/80	11,200		34	33 3/8	33.687
7/25/80	400				
8/8/80	36,500		34 1/4	33 1/2	33.875
8/15/80	4,700		34 1/4	34 1/4	34.25
	<u>164,700</u>	<u>36,100</u>			

The average number of shares traded per week during such period was 12,669; disregarding the shares sold by the Mazer family, the average declines to 9,892 shares per week.

6. Mrs. Nathanson's position, well-stated in her petition, is as follows:

"If each gift is considered as a separate transaction, the cumulative effect of six such gifts, one immediately succeeding the preceding, cannot be ignored. If the first gift merits only a small discount, the second gift would merit a higher discount, the third gift would merit a still higher discount, and so on. The discount taken (ten percent) was intended to establish an overall value of all six gifts."

Petitioner further maintains that consideration must be given to the depressed state of this fixed income security, the depressed state of the construction business of Georgia Pacific, and a potential antitrust verdict of approximately 2.1 billion dollars which clouded the fortunes of Georgia Pacific in 1980.

#### CONCLUSIONS OF LAW

A. That for gift tax purposes, stock is valued by reference to the fair market value per share on the date of the gift. If there is a market for the stock, e.g., on the New York Stock Exchange as in the case at hand, the mean

between the highest and lowest quoted selling prices on the date of the gift constitutes the fair market value per share. Treas. Reg. §25.2512-2(a) and

(b). Paragraph (e) of the cited regulation provides, in pertinent part:

"In certain exceptional cases, the size of the block of securities made the subject of each separate gift in relation to the number of shares changing hands in sales may be relevant in determining whether selling prices reflect the fair market value of the block of stock to be valued. If the donor can show that the block of stock to be valued, with reference to each separate gift, is so large in relation to the actual sales on the existing market that it could not be liquidated in a reasonable time without depressing the market, the price at which the block could be sold as such outside the usual market, as through an underwriter, may be a more accurate indication of value than market quotations."

Where the donor demonstrates that (1) the block of stock comprising each separate gift is large in relation to the amounts of stock traded on the exchange where it is listed, and (2) the block could not be sold on such exchange at its quoted prices on the date of the gift or within a reasonable time thereafter, application of a blockage discount has been found to be warranted. E.g., Helvering v. Maytag, 125 F.2d 55 (8th Cir. 1942); Henry F. DuPont, 2 T.C. 246 (1943).

B. That given the number of shares in each gift as compared with daily trading in Georgia Pacific preferred A (2,534 shares including sales by the Mazer family; 1,978 shares excluding such sales), and given the fact that only a minority (approximately 25 percent) of Georgia Pacific preferred A was in the hands of the public, petitioner properly discounted the value of each gift by ten percent.



C. That the petition of Minnie Nathanson is hereby granted and the Notice of Deficiency issued on June 16, 1981 is cancelled.

DATED: Albany, New York

JAN 20 1984

STATE TAX COMMISSION

Roderick A. Clem  
PRESIDENT

Francis R. Kolmg  
COMMISSIONER

Mark J. [unclear]  
COMMISSIONER