

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|----------------------------|----------------------|
| In the Matter of the Petition of Lewis Novoting | : : : : : : | 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 Years 1972 - 1973. | | |

State of New York
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Lewis Novoting, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lewis Novoting
Lake Valhalla
Cold Spring, NY

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
6th day of May, 1983.

David Parchuck

Cherie R. Hegland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lewis Novoting :
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 Years 1972 - :
1973. :
:

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Stephen A. Mishkin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen A. Mishkin
100 South Highland Ave.
Ossining, NY 10562

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
6th day of May, 1983.

David Parchuck

Annice R. Haydel

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Lewis Novoting
Lake Valhalla
Cold Spring, NY

Dear Mr. Novoting:

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) 1007(b) 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Stephen A. Mishkin
100 South Highland Ave.
Ossining, NY 10562
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|--|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| LEWIS NOVOTING | : | DECISION |
| for Redetermination of a Deficiency or for | : | |
| Refund of Gift Tax under Article 26-A of the | : | |
| Tax Law for the Quarters Ending December 31, | : | |
| 1972 and March 31, 1973. | : | |

Petitioner, Lewis Novoting, Lake Valhalla, Cold Spring, New York 10516, filed a petition for redetermination of a deficiency or for refund of gift taxes under Article 26-A of the Tax Law for the quarters ending December 31, 1972 and March 31, 1973 (File No. 13876).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 19, 1978 at 2:45 P.M. Petitioner appeared by Stephen A. Mishkin, Esq. The Audit Division appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUE

Whether petitioner properly valued a gift of shares of common stock in a closely held corporation.

FINDINGS OF FACT

1. Petitioner, Lewis Novoting, filed New York State resident quarterly gift tax returns for the quarters ending December 31, 1972 and March 31, 1973. The first return reported the gift of 25 shares of the common stock of Globe Slicing Machine Co., Inc. ("Globe") from petitioner to his wife, Carola Novoting, on "1/22/72". The actual date of the gift, however, was December 22, 1972 (12/22/72). The stock was valued at \$62,500.00 or \$2,500.00 per share. The

return for the quarter ended March 31, 1973 reported the gift of 5 shares of Globe common from petitioner to his said wife on March 7, 1973. These shares were valued at \$7,500.00 (\$1,500.00 per share).

2. On July 24, 1973 the Miscellaneous Tax Bureau issued statements of audit changes to petitioner which stated that the value of each of the gifted shares of stock was \$5,983.33. Accordingly, on December 4, 1975 the Bureau issued a Notice of Deficiency against petitioner asserting deficiencies in gift tax of \$816.31 for the quarter ending December 31, 1972 and \$258.03 for the quarter ending March 31, 1973.

3. Globe had 400 shares of common stock and 10,000 shares of preferred stock issued and outstanding. The preferred stock was callable at \$100.00 per share. Petitioner arrived at the valuation of \$2,500.00 per share by the following method:

| | | |
|--|----------------------|-----------------------|
| Retained Earnings (12/31/71) | | \$2,231,119.00 |
| Less: Reserve for intercompany profits in inventory. | | |
| Globe Inventory | \$1,247,185.00 | |
| Due to Subsidiaries | (542,441.00) | |
| | <u>\$ 698,774.00</u> | |
| Reserve 30% of \$698,774.00 | | (209,623.00) |
| | | <u>\$2,021,496.00</u> |
| Less: Preferred Stock (cost) | \$ 10,000.00 | |
| Preferred Stock Recallable | | |
| (10,000 shares at \$100.00 | | |
| per share | <u>1,000,000.00</u> | |
| | | <u>1,010,000.00</u> |
| | | <u>\$1,011,496.00</u> |
| Add: Capital Stock | | 50,000.00 |
| Stock Holders' Equity | | <u>\$1,061,496.00</u> |
| Estimated Stock Value Per Share | | |
| (400 Shares) | | \$ 2,653.74 |

The figure of \$2,653.74 was rounded to \$2,500.00 per share. It is unknown as to how petitioners arrived at the value of \$1,500.00 per share for the March 7, 1973 gift. At the hearing, petitioners argument was confined to the \$2,500.00 per share figure.

4. The Miscellaneous Tax Bureau reached its valuation as follows:

| | |
|---------------------------------------|------------------------|
| Retained Earnings as of 12/31/72 | \$2,403,330.00 |
| Less Preferred Stock | <u>10,000.00</u> |
| | \$2,393,330.00 |
| \$2,393,330 divided by 300 shares | <u>\$ 5,983.33</u> |

5. The method used by petitioner had also been used by the estate of another owner of Globe common stock and its use resulted in a Federal gift tax return for the second quarter of 1972 having been accepted as filed.

6. On August 20, 1975, the Miscellaneous Tax Bureau prepared a recomputation of the value of the Globe common stock "in accordance with the methods used by the Internal Revenue Service":

| | |
|--|--------------------------|
| Retained Earnings (as of 12/31/72) | \$2,403,330.00 |
| Less: Reserve for intercompany profits in inventory. | \$1,238,196.00 |
| Due to Subsidiaries | <u>(513,068.00)</u> |
| | \$ 725,128.00 |
| Reserve 30% of \$725,128.00 | <u>(217,538.00)</u> |
| | \$2,185,792.00 |
| Less: Preferred Stock-Cost \$10,000.00 | |
| Recallable at \$100.00 | |
| per share | <u>1,000,000.00</u> |
| | \$1,185,792.00 |
| Common Stock | <u>40,000.00</u> |
| Stock Holders' Equity | \$1,225,792.00 |
| Book Value Per Share (400 Shares) | \$ 3,064.48 |

(It is noted that the Bureau appears to have conceded the propriety of the reserve for intercompany profits.)

CONCLUSIONS OF LAW

A. That section 1009 of the Tax Law provides that the gift tax provisions of the Internal Revenue Code shall apply to the determination of New York gift tax to the extent specified in Article 26-A. Section 2512(a) of the Code provides that if a gift is made in property, the value thereof on the date of the gift is considered the amount of the gift.

B. That in valuing stock in the absence of sale and bid prices therefor, the corporation's net worth, prospective earning power, dividend-paying capacity and other relevant factors are to be taken into consideration. Treas. Reg. Sec. 25.2512-2(f); Rev. Rul. 59-60, 1959-1 C.B. 237, as modified by Rev. Rul. 65-193, 1965-2 C.B. 370.

C. That petitioner's calculation of the net worth (book value) of the stock at issue was incorrect in two respects:

(i) Retained Earnings as of December 31, 1972 should have been used rather than January 1, 1972, as it would more accurately reflect the value of the stock at the time of the gifts, i.e. December 22, 1972 and March 7, 1973.

(ii) While the liquidation value of the preferred stock (here the recall figure of \$100.00 per share for 10,000 shares or \$1,000,000.00) should be deducted from retained earnings before determining stockholders' equity, the cost of the preferred stock (here \$10,000.00), should not have been so deducted.

Accordingly, the Miscellaneous Tax Bureau properly calculated the value of the stock at \$3,064.48 in its recomputation of August 20, 1975.


D. That the petition of Lewis Novoting is granted only to the extent that the deficiencies are to be reduced based on the recomputation provided for in Conclusion of Law "C"; except as so granted, the petition is denied.

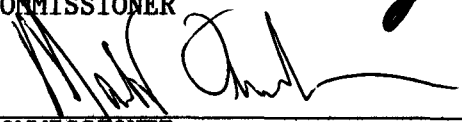
DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER