

STATE OF NEW YORK  
STATE TAX COMMISSION

*Miss. Tax Determination  
Stock Transfer Tax  
A-2  
Pan Video Productions, Inc.*

In the Matter of the Petition

of

PAN-VIDEO PRODUCTIONS, INC.

For a Redetermination of a Deficiency or  
a Refund of STOCK TRANSFER  
Taxes under Article(s) 12 of the  
Tax Law for the (Year(x)) 1962

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Patricia Whitman, 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 18th day of September, 1969, she served the within Notice of ~~Decision~~ (or Determination) by (certified) mail upon Mr. Elliott Mandl, Pan-Video Productions, Inc. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Elliott Mandl, Executive Executive Vice President, Pan-Video Productions, Inc. 280 South Grove Street, Freeport, L.I., N.Y. 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

18th day of September, 1969.

Grace E. Pritchard

Patricia Whitman

*Pan-Video Productions, Inc.*

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION :  
OF :  
PAN-VIDEO PRODUCTIONS, INC. :  
FOR A REVIEW OF A DETERMINATION : DECISION  
ASSESSING A STOCK TRANSFER TAX, :  
PURSUANT TO ARTICLE 12 OF THE TAX :  
LAW FOR THE YEAR 1962 :  
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Pan-Video Productions, Inc. having filed an application for a hearing to review a determination assessing stock transfer tax, pursuant to Article 12 of the Tax Law, and such application for a hearing having been timely made as it is found, and a hearing having been held at the offices of the Department of Taxation and Finance of the State of New York, 80 Centre Street, New York, New York, on May 5, 1965, before Francis X. Boylan, Esq., Hearing Officer, and Elliott Mandl, Executive Vice President of Pan-Video Productions, Inc. having appeared and testified in its behalf, and Victor Redling, Tax Examiner of the Stock Transfer Tax Section, Miscellaneous Tax Bureau, Department of Taxation and Finance having been present and having testified, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By a notice of assessment No. 177 dated November 16, 1964, the State Tax Commission assessed stock transfer tax in the amount of \$480 against Pan-Video Productions, Inc. as the transferee of 24,000 of its own shares, which were endorsed back to it on February 28, 1962 by one Elliott Mandl, its Executive Vice President. No assessment of transfer tax was made against Elliott Mandl as transferor.

IN THE MATTER OF THE APPLICATION

OF

PAN-VIDEO PRODUCTIONS, INC.

D E C I S I O N

FOR A REVIEW OF A DETERMINATION  
ASSESSING A STOCK TRANSFER TAX,  
PURSUANT TO ARTICLE 13 OF THE TAX  
LAW FOR THE YEAR 1962

Pan-Video Productions, Inc. having filed an application

for a hearing to review a determination assessing stock transfer

tax, pursuant to Article 13 of the Tax Law, and such application

for a hearing having been timely made as it is found, and a

hearing having been held at the offices of the Department of

Taxation and Finance of the State of New York, 80 Centre Street,

New York, New York, on May 5, 1963, before Francis A. Boylan, Esq.,

Hearing Officer, and Elliott Mandl, Executive Vice President of

Pan-Video Productions, Inc. having appeared and testified in its

behalf, and Victor Koblitz, Tax Examiner of the Stock Transfer Tax

Section, Miscellaneous Tax Bureau, Department of Taxation and

Finance having been present and having testified, and the record

having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) By a notice of assessment No. 177 dated November 16,

1962, the State Tax Commission assessed stock transfer tax in the

amount of \$410 against Pan-Video Productions, Inc. as the transferee

of 24,000 of its own shares, which were endorsed back to it on

February 21, 1963 by one Elliott Mandl, its Executive Vice President.

No assessment of transfer tax was made against Elliott Mandl as

transferor.

(2) At that time, (February 28, 1962) and since October 27, 1961, two certificates, numbered 3A and 4A, each in the amount of 15,000 shares, made out in the name of the said Elliott Mandl, had been kept in the certificate book of the said corporation undetached; and not delivered to him.

(3) The R. J. Curlyo Company, by a contract dated November 27, 1961, had agreed with the corporation to market a public offering of 100,000 shares of the stock. Under the contract's provisions, the underwriter was to purchase 30,000 shares at 10¢ a share and the corporation was to arrange to have this number of shares transferred to the underwriter by a shareholder of the corporation.

The corporation had not been able to pay Elliott Mandl a salary for services rendered as an officer and employee and the shares were issued to him for the purpose of effecting this transfer to the underwriter. The proceeds of \$3,000, to be paid by the underwriter, were to be paid over to the said Elliott Mandl by the corporation.

This agreement with the underwriter was rescinded, however, and ultimately the underwriter did not ever undertake to market a public offering of the corporation's shares, nor did it purchase any shares.

The said Elliott Mandl thereafter, as stated, on February 28, 1962, endorsed the shares in blank to the corporation at the request of its then counsel. The corporation thereupon recorded 24,000 of the said shares as constituting treasury stock, and issued four new certificates aggregating 6,000 shares in the same name of the said Elliott Mandl, and delivered these certificates to him.

(2) At that time, (February 28, 1962) and since October 27, 1961, two certificates, numbered 3A and 4A, each for the sum of 12,000 shares, made out in the name of the said Elliott Mandel, had been kept in the certificate book of the said corporation undetached, and not delivered to him.

(3) The R. J. Curly Company, in a contract dated November 27, 1961, had agreed with the corporation to market a public offering of 100,000 shares of the stock. Under the contract's provisions, the underwriter was to purchase 20,000 shares at 10 1/2 a share and the corporation was to arrange to have this number of shares transferred to the underwriter by a shareholder of the corporation.

The corporation had not been able to pay Elliott Mandel a salary for services rendered as an officer and employee and the shares were issued to him for the purpose of effecting this transfer to the underwriter. The proceeds of \$2,000, to be paid by the underwriter, were to be paid over to the said Elliott Mandel by the corporation.

This agreement with the underwriter was rescinded, however, and ultimately the underwriter did not even undertake to market a public offering of the corporation's shares, nor did it purchase any shares.

The said Elliott Mandel thereafter, as stated, on February 28, 1962, endorsed the shares in blank to the corporation at the request of its then counsel. The corporation thereupon recorded 24,000 of the said shares as constituting treasury stock, and issued four new certificates aggregating 6,000 shares in the name of the said Elliott Mandel, and delivered these certificates to him.

These 6,000 shares were issued in consideration of the indebtedness of the corporation to Elliott Mandl for his services and were in lieu of the proceeds in the amount of \$3,000, which were to have been derived from the sale to the underwriting company; and Elliott Mandl executed a waiver to the corporation of any rights he had to the said amount of \$3,000.

Upon the foregoing facts and findings and all of the evidence presented herein, the State Tax Commission hereby

**DECIDES:**

(A) That the original issuing by the corporation herein of certificates 3A and 4A, each in the amount of 15,000 shares made out in the name of Elliott Mandl was incomplete and not fully consummated, in that the certificates were not delivered to such person, and were not owned or controlled by him.

(B) That the shares represented by the undelivered certificates, 3A and 4A, continued at all times to be owned by the said corporation; and the endorsement by its officer of the certificates back to the corporation did not constitute a "reacquisition" by the corporation or other "transfer" within the meaning intended by Tax Law Section 270, which contemplates a transfer that is subsequent to a completed original issue. The endorsement here served to cancel the incomplete original issue of the said two undelivered certificates, it is held.

(C) That, accordingly, the aforesaid assessment of

These 6,000 shares were issued in consideration of the indebtedness of the corporation to Elliott Mandl for his services and were in lieu of the proceeds of the amount of \$3,000, which were to have been derived from the sale to the underwriting company; and Elliott Mandl executed a waiver to the corporation of any rights he had to the said amount of \$3,000.

Upon the foregoing facts and findings and all of the evidence presented herein, the State Tax Commission hereby

DECIDES:

- (A) That the original issuing by the corporation herein of certificates 3A and 4A, each in the amount of 15,000 shares made out in the name of Elliott Mandl was incomplete and not fully consummated, in that the certificates were not delivered to such person, and were not owned or controlled by him.
- (B) That the shares represented by the undelivered certificates, 3A and 4A, continued at all times to be owned by the said corporation; and the endorsement by its officer of the certificates back to the corporation did not constitute a "rescission" by the corporation or other "transfer" within the meaning intended by Tax Law Section 270, which contemplates a transfer that is subsequent to a completed original issue. The endorsement here served to cancel the incomplete original issue of the said two undelivered certificates, it is held.
- (C) That, accordingly, the aforesaid assessment of

stock transfer tax by assessment No. 177 dated November 16, 1964  
is canceled.

And IT IS SO ORDERED.

Dated: Albany, New York this 11th day of September, 1969.

STATE TAX COMMISSION

  
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PRESIDENT

  
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COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER



Stock transfer for by agreement No. 177 dated November 16, 1964  
is canceled.

And it is so ordered.

Dated: Albany, New York this 10th day of December, 1964.

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