

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
MARVIN MONROE DAVID, ESQ.
For a Redetermination of a Deficiency or
a Refund of Stock Transfer
Taxes under Article ~~(xx)~~ 12 of the
Tax Law for the (Year(s))

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(REGISTERED)~~ MAIL

State of New York
County of Albany

Margaret Wood, 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 26th day of March, 1970, she served the within Notice of Decision ~~(or Redetermination)~~ by ~~(certified)~~ mail upon Marvin Monroe David, Esq.
(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Marvin Monroe David, Esq.
10 East 40th Street
New York, New York 10016
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

26th day of March, 1970.

Maria Buckley

Margaret Wood

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN MONROE DAVID, ESQ.

For a Redetermination of a Deficiency or
a Refund of Stock Transfer
Taxes under Article(s) 12 of the
Tax Law for the (Year(s))

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

State of New York
County of Albany

Margaret Wood, 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 26th day of March, 1970, she served the within
Notice of Decision ~~(or Determination)~~ by ~~(certified)~~ mail upon Marvin Monroe

David, Esq. ~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Marvin Monroe David, Esq.
10 East 40th Street
New York, New York 10016

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)~~
~~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

26th day of March, 1970.

Marie Buckley

Margaret Wood

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application
of
ALPHA COMPUTER SERVICE CORPORATION
For a Hearing to Review a Determination
of Stock Transfer Taxes due pursuant to
Article 12 of the Tax Law

In the Matter of the Application
of
MARVIN MONROE DAVID
For a Hearing to Review a Determination
of Stock Transfer Taxes due pursuant to
Article 12 of the Tax Law

DECISION

In the Matter of the Application
of
DAN C. BRENNAN
For a Hearing to Review a Determination
of Stock Transfer Taxes due pursuant to
Article 12 of the Tax Law

In the Matter of the Application
of
GEORGE VAJDA
For a Hearing to Review a Determination
of Stock Transfer Taxes due pursuant to
Article 12 of the Tax Law

The above captioned taxpayer having filed applications pursuant to Section 279-a of the Tax Law for a hearing to review notices of determination, each dated May 2, 1969, of stock transfer taxes imposed by Article 12 of the Tax Law and a hearing having been duly held before Nigel G. Wright, Hearing Officer, and the record having been duly

examined and considered,

the State Tax Commission hereby

FINDS:

1. The issue in this case relates to the application of the tax to an alleged agreement, dated June 18, 1968, to sell shares of Alpha Computer Service Corporation. The applicants assert such agreement was a loan agreement with the shares being held as collateral security.

2. The notice of determination of tax and attached schedule asserts a tax against an alleged agreement of June 18, 1968, to transfer 45,000 shares of stock from Mr. Vajda and 45,000 shares of stock from Mr. David each to Mr. Brennan. Mr. Vajda and Mr. David are each assessed \$562.50 on 45,000 shares each, and the corporation and Mr. Brennan are assessed \$1125.00 on 90,000 shares.

3. Alpha Computer Service Corporation was organized in New York State in May 1967 with three equal shareholders, Mr. Brennan, Mr. David, and Mr. Vajda. A separate agreement provided for a right of first refusal by each shareholder if one of them wished to sell. A fourth shareholder came in during the corporation's first year, but his holdings were limited to 10%, and the three major shareholders were each reduced to a 30% interest each. At all times thereafter, the three major shareholders were the owners, at least beneficially, of equal shares.

4. By amendments to the certificate of incorporation before the transaction in question, the capitalization was authorized at 500,000 shares at two cents par value.

5. More shares were subscribed to and issued on or about June 18, 1968.

6. The agreement of June 18, 1968, is to the following effect: Mr. Brennan is to assign his rights to receive 90,000 shares equally

to Mr. Vajda and Mr. David; Mr. Vajda and Mr. David may exercise this right upon payment of \$900 each (par value) to the corporation. Mr. Vajda and Mr. David agree to resell this stock to Mr. Brennan upon payment by him to them of \$900 each with interest.

7. The assignment took place and Mr. Vajda and Mr. David obtained legal title to the 90,000 shares and at the date of the hearing retained legal title. It was understood, however, that Mr. Brennan held the voting rights to these shares.

8. Any purported transfer from Mr. Brennan to Mr. Vajda and Mr. David has not been put in issue here by amendment to the notice of determination.

9. It has not been shown that a certificate claiming exemptions under Tax Law Section 270-5 was attached to the agreement.

Upon the foregoing findings and all the evidence in the case the State Tax Commission hereby

DECIDES:

A. The agreement in question is an agreement to transfer at least legal, if not beneficial, title to the securities in question from Mr. Vajda and Mr. David to Mr. Brennan and is taxable under Section 270-1 of the Tax Law unless otherwise exempt.

B. The taxpayer has not carried the burden of proof that the agreement is exempt as a re-transfer of collateral security under a loan agreement as provided by Section 270-5 of the Tax Law or is exempt for any other reason.

C. The determinations of tax here is affirmed with respect to each of the applicants and in the amount set forth in paragraph number two.

DATED: Albany, New York

March 24, 1970

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce H. H. H.
COMMISSIONER

William C. H. H.
COMMISSIONER