

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CAL A. STADLEN

For a Redetermination of a Deficiency or
a Refund of Stock Transfer
Taxes under Article(11) 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 27th day of April, 1970, she served the within
Notice of Decision (~~on Determination~~) by (~~certified~~) mail upon Cal A.

Stadlen (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Cal A. Stadlen
130 West 57th Street
New York, New York 10019

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

27th day of April, 1970.

James Wright

Margaret Wood

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application
of

LAROUSSE CORPORATION
CAL A. STADLEN
ALLEN SWIFT
ASHER RICHMAN
ALLEN SWIFT and
VICTOR BABBITT as Trustees
under a voting trust

DECISION

For a Hearing to Review a Determination
of Stock Transfer Taxes due pursuant to
Article 12 of the Tax Law

The taxpayers having filed applications pursuant to Section 279-c of the Tax Law for a hearing to review notices of determination each dated August 1, 1968, 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 is the validity of a tax on two transfers of penny par value shares. The first transfers are the assignment of shares of Larousse Corporation on March 22, 1965 by Kingman Industries Inc. to the three individuals who have been assessed. The second transfer is the assignment of the same shares by these individuals on June 8, 1965 to the voting trustees who have been assessed.

2. The determinations assess tax at the two cent no sale rate. Larousse Corp. is assessed \$2,999.80 on two transfers of

of 74,995 shares on March 22, 1965 and on June 8, 1965. Mr. Stadlen is assessed \$449.96 on two transfers of 11,249 shares on the same dates. Mr. Swift is assessed \$1649.88 on two transfers of 41,247 shares on the same dates. Mr. Richman is assessed \$300 on two transfers of 7500 shares on the same dates. The trustees, the ultimate transferees, are assessed \$1499.90 on the one transfer of 74,995 shares on June 8, 1965.

3. Larousse Inc., later to be renamed Kingman Industries, Inc., was organized in New York by the filing of a certificate of incorporation on October 15, 1962, with 200 authorized shares of no par value stock. At sometime thereafter an underwriter, Allen & Co. suggested that a second corporation be formed to hold the operating assets of Larousse Inc. An agreement dated April 1, 1964 between Larousse Inc., Allen & Co., Victor Dabbitt and Allen Swift provided as follows: A new corporation would be formed, Larousse Inc. would contribute certain patents thereto in exchange for 80 shares and Allen & Co. would contribute \$5000 in exchange for 20 shares. At this time Swift and Dabbitt were the record owners of 100% of the outstanding stock of Larousse Inc. and the beneficial owners of 70% of such stock.

4. Larousse Corporation was organized in New York by the filing of a certificate of incorporation on April 19, 1964. One hundred shares of \$1.00 par value stock were authorized. Eighty shares were issued to Kingman Industries, Inc. Twenty shares were issued to Allen & Co.

5. On January 15, 1965 Allen & Co. sold its stock back to Larousse Corp. for \$4500. Stanley Shuman an officer of Allen & Co. resigned on the same day as a director of Larousse Corp.

6. On May 10, 1965 Larousse Corp. ratified a letter of intent dated February 24, 1965 and as amended on May 7, 1965 between D. H. Thomas & Co. and Larousse Corp. to provide for financing.

7. By an amendment filed on February 18, 1965, to its certificate of incorporation the number of authorized shares of Larousse Corp. was changed to one million shares of par value one cent each. Twenty old shares of treasury stock were eliminated and the 80 issued old shares were replaced by 74,995 new shares.

8. On March 10, 1965, Mr. Babbitt, in a letter to Mr. Stadlen, explained that D. H. Thomas & Co. underwriters, would attempt to raise \$75000 through convertible debentures, but that this was contingent upon a voting trust agreement and the increase in authorized shares. Mr. Stadlen was told that any papers signed by him to create a voting trust would be retained by an attorney and would be contingent upon the raising of the \$75,000. The attorney in a separate affidavit confirms the contingent nature of this transaction.

9. On March 24, 1965, Kingman Industries Inc. assigned its old 80 shares as follows: 16 shares to Victor Babbitt, 44 shares to Allen Swift, 12 shares to Cal A. Stadlen, and 8 shares to Asher Richman. (These would represent the following number of new shares, respectively: 1500, 41250, and 7500 for a total of 74,995 new shares.)

10. New certificates dated March 22, 1965 were issued as follows: 14,999 to Victor Babbitt; 41,247 to Allen Swift, 11,249 to Cal A. Stadlen; and 7500 to Asher Richman for a total number of shares of 74,986. These certificates were never physically delivered but remain in the stock record book.

11. On June 8, 1965, each of the certificates previously transferred on March 22, 1965 were assigned to Allen Swift and Victor Babbitt as trustees under a voting trust agreement dated March 23, 1965. Each transferor gave a power of attorney to

a law firm to make the transfer on the books of the corporation.

12. Mr. Swift, the only trustee who appeared at the hearing asserts that the trust was contingent upon financing, that all papers had been left in the hands of the attorney and that he had never accepted delivery of the shares as trust assets nor agreed unconditionally to accept the trust. There is no contrary evidence in the record.

Upon the foregoing findings and all the evidence in the case

The State Tax Commission hereby

DECIDES:

A. At the time of the transactions here in question the increase in the number of shares was effective and the tax is properly computed on the number of new shares transferred.

B. The assignments of March 22, 1965 constituted at least transfers of record title and were property taxes.

C. The transfers of June 8, 1965 were not effective. The transferee voting trust has not been unconditionally accepted by the trustees. Thus the transferee was not in existence on the date of the transfer and never came into existence thereafter.

D. The assessment against Allen Swift and Victor Babbitt as trustees is completely erroneous and is cancelled in full. The assessments against Larousse Corporation, Cal A. Stadlen, Allen Swift and Asher Richman are erroneous in part and are hereby redetermined to be one half of the amount assessed as follows: Larousse Corporation, \$1,499.90; Cal A. Stadlen, \$224.98; Allen Swift, \$824.94; Asher Richman, \$150.00.

DATED: Albany, New York
April 22, 1970

STATE TAX COMMISSION

Norman Hollander
COMMISSIONER

Abraham Maslow
COMMISSIONER

Milton Korman
COMMISSIONER