

STATE OF NEW YORK
STATE TAX COMMISSION

*Hernstadt, William H.
Stock Transfer
12*

In the Matter of the Petition

of

William H. Hernstadt

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

1971

State of New York
County of Albany

Martha Fumaro, 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 19th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon William H. Hernstadt (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: William H. Hernstadt
99 Stonehedge Drive
North Greenwich, Connecticut

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

19th day of January, 1971

Linda Wilson

Martha Fumaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
WILLIAM H. HERNSTADT : DECISION
for a Hearing to Review a Determination :
of Stock Transfer Tax due pursuant to :
Article 12 of the Tax Law. :

Taxpayer having filed an application pursuant to Section 279-a of the Tax Law for a hearing to review a determination of stock transfer tax due pursuant to Article 12 of the Tax Law and a hearing having been duly held before Nigel G. Wright, Hearing Officer, and the record having been recommended and considered,

The State Tax Commission hereby

FINDS:

1. The sole question herein is whether there was a cancellation of shares by a corporation so that the previous redemption of such shares is tax free under Section 270 (1) of the Tax Law.

2. United Communications, Inc., filed its certificate of incorporation in New York on February 3, 1960. It authorized 475,000 shares of class A common stock with 10 cents par value and 25,000 shares of class B common stock with 10 cents par value. No provision requires cancellation of required shares nor permits the board of directors to cancel such shares. The corporation issued 84,000 class A shares and 21,000 class B shares divided equally between William Hernstadt, Mr. William E. Murray and a third person.

3. On July 15, 1964, the taxpayer transferred to the corporation 35,000 shares of the stock of United Communications, Inc., in return for \$400. The tax was assessed at 1 cent a share for a total of \$350.00.

4. In July, 1964, the corporation had about \$1400 in a checking

account. About \$200 was retained for payment of franchise taxes and the remaining \$1200 was divided three ways. Two of the stockholders each received \$400 for his shares and the third, Mr. Murray, retained his shares as the sole remaining shareholder.

5. It was the intent of Mr. Hernstadt that the redeemed stock would be cancelled so as to avoid stock transfer taxes and that Mr. Murray could continue the corporation as a shell for his own purposes if he so desired.

6. Mr. Murray by his own statements took no steps to cancel the shares required by the corporation.

7. A certificate of voluntary dissolution was filed by United Communications, Inc., on October 5, 1965 signed by William E. Murray as the holder of all of the outstanding voting shares. It listed both Mr. Murray and Mr. William H. Hernstadt as officers and directors although they had resigned from such offices in 1964.

8. There was never any amendment to the certificate of incorporation reducing the number of authorized shares.

9. There was never any amendment to the certificate of incorporation reducing the par value of outstanding shares.

10. The corporation never kept minutes of its board of directors. The general ledger, of the corporation, showing the number of issued shares and the number of outstanding shares was not tendered in evidence. Even though the stock ledger was not available it was admitted that certificates were never issued to the corporation as the owner of its own shares.

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

DECIDES:

A. The stock in question was purchased by the corporation and is taxable under Tax Law Section 270 if the corporation retained such

shares as treasury shares and did not cancel such shares to return them to authorized but unissued status. The shares in question were not returned to unissued status. The shares were not cancelled on reacquisition nor at any other time within one year of such reacquisition by either amendment to the certificate of incorporation or by action of the board.

B. The application is denied and the determination of tax is affirmed.

DATED: Albany, New York
January 19, 1971

STATE TAX COMMISSION

Norman Gelman

COMMISSIONER

Bruce Mauley

COMMISSIONER

Milton Krumm

COMMISSIONER