

STATE OF NEW YORK
STATE TAX COMMISSION

*Magnus & Co. Inc.
Miscellaneous Tax
Stock Transfer
Article 12
1971*

In the Matter of the Petition

of
Magnus & Co., Incorporated

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

Martha Funaro, 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 13th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Magnus & Co., Incorporated (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Magnus & Co., Incorporated
20 Exchange Place
New York, New York

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

13th day of January, 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Magnus & Co., Incorporated

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))

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State of New York
County of Albany

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70 Pine Street
New York, New York

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

13th day of January, 1971

Linda Wilson

Martha Funaro

STATE TAX COMMISSION

Magnus & Co., Inc., have made an application to set aside certain New York State Stock Transfer Taxes assessed pursuant to Article 12 of the Tax Law. A formal hearing was held on October 9, 1963, in the offices of the State Tax Commission in the City of New York. The applicant appeared and was represented by Borden & Ball, Esq., Wallace J. Borden, Esq., and John H. Hall, Esq., of Counsel. The Miscellaneous Tax Bureau - Stock Transfer Section appeared through Bernard Belskin, Tax Administrative Supervisor and Louis Morgenbesser, Supervising Tax Examiner.

1. On May 28, 1963, the Miscellaneous Tax Bureau issued determination #144 against taxpayer for stock transfer tax totalling \$2,900.00.

3. During the period, October 10, 1961 to August 23, 1962, taxpayer, acting as a broker/dealer in securities effected transfers of shares of common stock, as follows:

<u>Name of Stock</u>	<u>Period</u>
Hampton Sales Co., Inc.	Sept. 1961 to Nov. 7, 1962
Jorn's Greeting Card Co., Inc.	Feb. 28, 1962 to Apr. 4, 1962
Knickerbocker Biologicals, Inc.	Jan. 1, 1962 to Aug. 23, 1962
March Dynamics, Inc.	Dec. 8, 1961 to Jan. 25, 1962
Plastiline, Inc.	Dec. 15, 1961 to Aug. 6, 1962
U. S. Plastic & Chemical Corp.	Dec. 13, 1961 to Apr. 19, 1962

4. The transfers as set forth above were all made to F. S. M. Co. (c/o Magnus & Co., Inc.). At the time of the transfers F. S. M. Co. was not registered as a nominee of taxpayer with the State Tax Commission.

5. Taxpayer contends that in spite of this failure to register F. S. M. & Co., the transfers as set forth in this determination were made to taxpayer as custodian and, therefore, would not require the registration of the nominee.

6. Taxpayer testified that he did take ownership of the stock certificates in the course of the transacting the transfers.

7. Taxpayer has failed to sustain his burden of proving that he took these stocks as custodian.

8. Pursuant to Article 12, of the Tax Law, the taxpayer was required to register its nominee, F. S. M. & Co.

DETERMINATION

A. The applicant was obligated to register its nominee with the State Tax Commission.

B. Since no such registration was made by taxpayer, the transfer was a taxable transaction.

C. The application is denied and the determination is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

January 11, 1971

Norman Gelman
COMMISSIONER

Bruce Kaulley
COMMISSIONER

Milton Korman
COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12226



- ☐ Moved, left no address
- ☐ No such number
- ☒ Moved, not forwardable
- ☐ Addressee unknown

Rep
Only

Borden & Ball, Esqs.
70 Pine Street
New York, New York

My



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

*Magnus & Co, Inc.
Stock Transfer
Article 12*

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

January 13, 1971

Magnus & Co., Incorporated
20 Exchange Place
New York, New York

Please take notice of the **Decision** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **Section 279a**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 Days** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Lawrence A. Newman
Lawrence A. Newman

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :

of :

MAGNUS & CO., INCORPORATED :

DECISION

to set aside certain New York State :
Stock Transfer Taxes Assessed
Pursuant to Article 12 of the Tax :
Law

Magnus & Co., Inc., have made an application to set aside certain New York State Stock Transfer Taxes assessed pursuant to Article 12 of the Tax Law. A formal hearing was held on October 9, 1963, in the offices of the State Tax Commission in the City of New York. The applicant appeared and was represented by Borden & Ball, Esq., Wallace J. Borden, Esq., and John H. Hall, Esq., of Counsel. The Miscellaneous Tax Bureau - Stock Transfer Section appeared through Bernard Belskin, Tax Administrative Supervisor and Louis Morgenbesser, Supervising Tax Examiner.

FINDINGS OF FACT

1. On May 28, 1963, the Miscellaneous Tax Bureau issued determination #144 against taxpayer for stock transfer tax totalling \$2,900.00.
2. On June 24, 1963, taxpayer filed a demand for hearing.
3. During the period, October 10, 1961 to August 23, 1962, taxpayer, acting as a broker/dealer in securities effected transfers of shares of common stock, as follows:

<u>Name of Stock</u>	<u>Period</u>
Hampton Sales Co., Inc.	Sept. 1961 to Nov. 7, 1962
Jorn's Greeting Card Co., Inc.	Feb. 28, 1962 to Apr. 4, 1962
Knickerbocker Biologicals, Inc.	Jan. 1, 1962 to Aug. 23, 1962
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DATED: Albany, New York

STATE TAX COMMISSION

January 11, 1971

Norman G. Gellman
COMMISSIONER

Bruce K. Kaulley
COMMISSIONER

Milton Korman
COMMISSIONER



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

January 13, 1971

Magnus & Co., Incorporated

~~20 Exchange Place~~

~~New York, New York~~

115 Broadway
New York, N. Y.

remailed
1/25/71

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the State Tax Commission enclosed herewith.

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the Tax Law any proceeding in court to review an adverse decision
must be commenced within 90 Days after
the date of this notice.

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in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Lawrence A. Newman

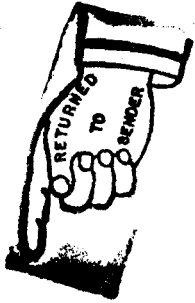
Lawrence A. Newman

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12226



Magnus & Co. Incorporated
20 Exchange Place
New York, New York

☐ Moved, left no address
☐ No such number
☐ Moved, not forwardable
☒ Address unknown

1/2

Remain Broadway
115
NYC

131 5120

STAMER & HAFT

ATTORNEYS AT LAW

140 EAST 80TH STREET • NEW YORK, N.Y. 10021

(212) 628-5200

April 15, 1971

CABLE: LAWSTAF NEWYORK

Mr. John Purcell, Director
of Miscellaneous Taxes
Department of Taxation and
Finance
State Campus - Bldg. 9
Albany, New York 12226

Re: Magnus & Company - Decision: 1-25-71

Dear Mr. Purcell:

I enclose herewith a photostat copy of the letter above referred to and the decision, dated January 11, 1971, rendered against Magnus & Company, Incorporated.

I enclose, as well, check of this law firm, in the sum of \$1,450.00, in offer of compromise and settlement of the matter described in the enclosed decision. This matter has been the subject of conversations with representatives of the State Tax Commission. The check is delivered to you only on the ground that the offer can be and is, in fact, accepted by the Commission as a final disposition of the matter. In any other event, the check should be returned to the undersigned.

The facts, briefly, are that adequate consideration was not, in our opinion, given to the fact that failure by the appropriate authorities to issue a registered nominee number to FSM Co. was the result of a ministerial error in Albany, rather than the fault of the putative taxpayer. Taxpayer did make timely application for registration of FSM Co. as its nominee and, in fact, made application simultaneously with the Federal Government. Federal registration was issued within 30 days of application, but due to the fact that a great deal of mail, including taxpayer's application for registration, was mislaid in Albany, registration did not issue until some time after the period in question covered by the decision. Taxpayer had been advised by its counsel to use FSM Co. as its registered nominee and counsel indicated to taxpayer that counsel had been advised by appropriate authorities in Albany that issuance of the registration number was forthcoming and that there were no problems. In fact, that was not so.

RECEIVED

APR 23 1971

STAMER & HAFT

Mr. John Purcell,
Director of Misc-
ellaneous Taxes
Department of
Taxation and
Finance

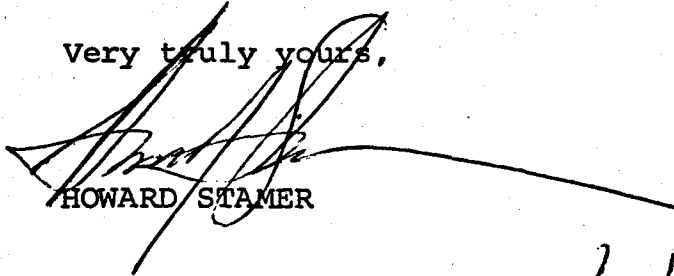
Page Two

April 15, 1971

Transfer taxes were paid on all of the shares in question and the result of the decision is to impose a double tax. This, coupled with the fact that the decision was rendered almost nine years after the events complained of by the Tax Commission, and at a time when taxpayer's records were no longer complete, and when taxpayer was no longer a registered broker-dealer in New York, works a substantial hardship in the circumstances.

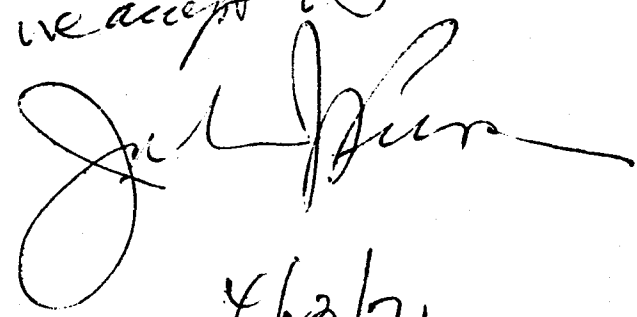
Our offer of settlement and compromise is made in the light of the foregoing facts and in the light of the equities in the matter, which are not insubstantial. It is prompted by the fact that we wish to avoid the Appellate procedures, which we would otherwise undertake, and that you may wish to avoid the costly and time-consuming collection procedures which, this case would seem to indicate, would be required.

Very truly yours,


HOWARD STAMER

HS:R/Enclosures (3)

OK Gallman 4/23
OK Korman 4/23
OK Korman 4/23
Shed Wolf
Secy 4/23/71

Recommending
we accept this

4/23/71

Collect Telegram to:

Stamer & Haft

Your letter offer Magnus and Company April 15
accepted by State Tax Commission April 23.

Edward Rook
Sec'y N.Y.S. Tax Commission

April 26, 1971

DEPARTMENT OF TAXATION AND FINANCE

~~Collect Telegram~~ EDWARD ROOK

Stamper + Haft.

Your letter offers
Magnus and Company
April 15 accepted
by State Tax Commission
April 23.

Edward Rook
Secy NYS Tax Com.

Return letter & telegram to
Parcell - make Xerox
of letter for our file.
