

STATE OF NEW YORK
STATE TAX COMMISSION

*Monarch Life Insurance Co.
Stock Transfer
Article 12*

In the Matter of the Petition

of

MONARCH LIFE INSURANCE COMPANY

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 8th day of June, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Monarch Life Insurance Company (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Monarch Life Insurance Company
1250 State Street
Springfield, Massachusetts 01101
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

8th day of June, 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MONARCH LIFE INSURANCE COMPANY

For a Redetermination of a Deficiency or
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Tax Law for the (Year(s))

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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 8th day of June , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon John F. Forner, Jr., Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John F. Forner, Jr., Esq.
c/o Olson, Sanford, Hatt & Forner
90 State Street
Albany, New York 12207
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

8th day of June , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MONARCH LIFE INSURANCE COMPANY	:	DECISION
for a Hearing to Review a Determination	:	
denying a claim for Refund of Stock	:	
Transfer Taxes imposed pursuant to	:	
Article 12 of the Tax	:	

The taxpayer having filed an application pursuant to Section 280 of the Tax Law for a hearing to review a determination denying a claim for refund of stock transfer taxes imposed pursuant to Article 12 of the Tax Law and a hearing having been held on February 25, 1970, before Nigel G. Wright, Hearing Officer, and the record thereof having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The issue in this case is whether a taxable transfer of stock occurred in New York State when two foreign corporations merged and, later, the portfolio stock owned by the extinct corporation was transferred into the name of the resulting corporation on the books of a transfer agent located in New York.

2. The amount claimed for refund is in the sum of \$16,918.80 and represents the amount paid by applicant to several transfer agents in reimbursement of the cost of transfer stamps claimed here to have been erroneously affirmed.

3. Monarch Life Insurance Company is a corporation organized and existing pursuant to the laws of the Commonwealth of Massachusetts with its principal office at 1250 State Street, Springfield, Massachusetts. Prior to the merger of Monarch and Springfield Insurance Company, over 99% of the stock of Monarch was owned by Springfield. Monarch was the surviving corporation to the merger.

4. The Springfield Insurance Company (Springfield) was at all

times hereinafter mentioned, and at the time of its merger with Monarch, a corporation organized and existing pursuant to the laws of the Commonwealth of Massachusetts, with its principal office at 1250 State Street, Springfield, Massachusetts.

5. Effective May 28, 1965, pursuant to Chapter 175, Section 19A of the General Law of Massachusetts, Springfield was merged into Monarch. All proceedings and agreements relating to the validity of the merger took place outside of the State of New York and the action of the Board of Directors and the stockholders necessary for the merger took place at meetings held at 1250 State Street, Springfield, Massachusetts.

6. Section 19A of Chapter 175 of the General Laws of Massachusetts states, in part, as follows: "Upon such merger or consolidation all rights and properties of the several companies shall accrue to and become the property of the continuing corporation or the new company which shall succeed to all the obligations and liabilities of the merged or consolidated companies, in the same manner as if they had been incurred or contracted by it."

7. Among the portfolio securities comprising Springfield's assets were certain stock certificates in the name of Springfield totaling 845,940 shares which were located in the City of Springfield, Massachusetts at the time of said merger of Springfield into Monarch.

8. By virtue of said merger, Monarch immediately became the proper party to execute stock powers to transfer such shares of stock that had been in the name of Springfield.

9. Between March 4, 1966 and March 25, 1966 such certificates of stock with duly executed stock powers attached, which comprised Springfield's portfolio before the merger of Springfield into Monarch, were sent by Monarch from the City of Springfield to each of the duly appointed transfer agents of the respective corporations whose stocks comprised Springfield's portfolio with instructions to said transfer agents to transfer said certificates of stock from the name of Springfield to the name of Monarch on the books and records of said corporations duly kept and maintained by said transfer

agents for said corporations in the City, County and State of New York. That the names of said transfer agents, the number of shares delivered to each, and the tax paid are as follows:

<u>Transfer Agent</u>	<u>Shares</u>	<u>New York State Stock Transfer Tax</u>
Bankers Trust Company	187,602	\$ 3,752.04
Chase Manhattan Bank, N.A.	144,888	2,897.76
Chemical Bank New York Trust Company	20,150	403.00
Irving Trust Company	38,694	773.88
Manufacturers Hanover Trust Company	88,830	1,776.60
Morgan Guaranty Trust Company of New York	365,776	7,315.52
TOTAL	<u>845,940</u>	<u>\$ 16,918.80</u>

10. That between said dates each of said transfer agents acting pursuant to the instructions of Monarch did change the name within the State of New York on said certificates of stock from the name of Springfield to the name of Monarch on the books and records of said corporations duly kept and maintained by said transfer agent within the City, County and State of New York. That the said certificates of stock in the name of Springfield were cancelled and new certificates of stocks of said corporations were duly issued in the name of Monarch by said transfer agents within the State of New York.

11. That said transfer agents, at the time of making the changes noted above, affixed to such certificates New York State stock transfer stamps in the total amount of \$16,918.80, obtained from the Bank of New York as fiscal agent for the State of New York.

12. Monarch, by checks drawn on the Valley Bank and Trust Company of Springfield, Massachusetts, paid such transfer agents the total sum of \$16,918.80 to reimburse the agents for the New York State stock transfer stamps affixed to the stock certificates.

13. Monarch filed an application dated June 2, 1967 for refund of the New York State stock transfer taxes paid between March 4, 1966 and March 25, 1966.

14. By letters dated November 13, 1967 and January 10, 1968, the State Tax Commission denied the refund application of Monarch and advised that such transactions were subject to the New York State stock transfer tax.

15. On December 4, 1967, Monarch timely requested a formal hearing on the denial of application for the refund of \$16,918.80.

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

DECIDES:

A. The change in name of stock on the books of the New York transfer agent is taxable under Section 270-1 of the Tax Law.


B. The application is denied and the denial of the refund is affirmed.

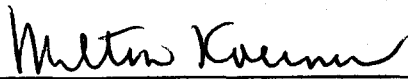
DATED: Albany, New York

June 8, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

File Stock Transfer

MEMORANDUM

TO : Mr. Edward Rook
FROM : Nigel G. Wright
SUBJECT: Monarch Life Insurance Company

I have drafted a decision in the above case which holds for the Department. I have done this against my own views and only because I understand that the Stock Transfer Tax Bureau and the taxpayer both are willing to litigate in the courts.

The issue in this case is whether a taxable transfer of stock occurred in New York.

The stock was held in the portfolio of a Massachusetts insurance company which merged with another Massachusetts company under Massachusetts law. The merger, of course, was out-of-state and, as so far stated, no tax could apply on the transfer of the portfolio stock to the resulting company. However, about a year after the merger the stock was presented to transfer agents in New York for a change in the name of the owner on the certificates to the name of the resulting corporation.

It is the position of the taxpayer that the entire interest in the stock was transferred in Massachusetts pursuant to the merger and the Massachusetts merger statute. The recording of the transfer was merely to change the name on the certificates. We have previously ruled that a woman recording the transfer of stock from a maiden name to a married name is not taxable since no actual transfer takes place. The fundamental notion in the taxpayer's argument is that a transfer to be taxable must accomplish a change in the legal rights and obligations of the parties. In this case the entire interest of the old insurance company was of course extinguished at the time of the merger. Since then the resulting insurance company has presumably been cashing the dividend checks and signing the proxies and the recording of the transfer does not seem to have had any effect, legally or practically, on the relations between the insurance company and the issuing companies or any one else.

It is the position of the stock transfer tax bureau that this mere recording of the transfer in New York is sufficient to incur the tax.

The most relevant language of Tax Law Section 270-1 is as follows:

"There is hereby imposed...a tax...on all sales,...or transfers... of stock...whether made upon or shown by the books of the...corporation ...or by any delivery, or by any...other evidence of sale or transfer... whether investing the holder with the beneficial interest in or legal title to said stock,...or merely with the possession or use thereof for any purpose,..."

To me the argument of the taxpayer is completely persuasive. The statute seems to assume that the transfer being taxed actually transfers some kind of interest (legal title, equitable title, possession) between the parties to the transaction. The statute is not drafted in the language of a recording tax.

Underlying this controversy undoubtedly are certain ambiguities in the law concerning the terms "record title" and "legal title". The recording of a stock transfer is sometimes said to involve a change of "record title". It is probably true that the recording of a transfer does have the effect of changing the rights of the parties in some transactions. In fact the taxpayer here concedes for argument that in all typical sale and purchase transactions through a broker the recording of the transfer would be essential to any transfer and would be taxable. The taxpayer is contesting however, the significance of the recording of the transfer in this particular case. A change in "legal title" is one of the subjects of our tax. It is probably possible to cite authorities, though that has not been done to the effect that the "legal title" the recording of a transfer. The taxpayer however could cite opposing authorities including an opinion of our own counsel dated July 19, 1968 which states that in a merger legal title passes at the time of the merger.

Ordinarily I would feel that this problem would deserve a lot of research time on the part of the Department.

I understand however, that someone in the Law Bureau has spent many months on this problem in connection with requests for counsel's opinion in other matters. Even though they apparently have postponed their own decision on these issues until after the Commission decides this case. I feel it would be wasteful for me to duplicate their work especially when it seems that everyone wants to go to court anyway. The Commission of course may wish to refer this to counsel for an opinion as to whether this position can be defended in the courts.

December 2, 1970

Nigel G. Wright

BUREAU OF LAW
MEMORANDUM*Stock Transfer*

TO

FROM :

Commissioners Gallman, Masley and Rosenberg

SUBJECT:

Samuel Hochman, Director

Hemach Life Insurance Co. vs.
State Tax Commission

Attached is a copy of the Appellate Division's opinion dated April 27, 1972, confirming the Tax Commission's June 8, 1971 decision holding that, in the case of a corporate merger effected outside New York, the transfer of record ownership of stock in New York from the name of the merged corporation to the name of the surviving corporation is subject to the stock transfer tax.

As yet, I do not know whether an appeal will be taken.

RECEIVED

BV:10

Enc.

May 10, 1972

cc: Bertram Schuman
Victor Bolling
Edward Beck, Esq.

Supreme Court—Appellate Division
Third Judicial Department

April 27, 1972.

18448

In the Matter of MONARCH
LIFE INSURANCE CO., Petitioner,
v.
STATE TAX COMMISSION, Respondent.

Determination confirmed, with costs.

Opinion per REYNOLDS, J.

HERLIHY, P. J., STALEY, JR., GREENBLOTT and SIMONS, JJ., concur.

#18448

STATE OF NEW YORK

SUPREME COURT

APPELLATE DIVISION

THIRD DEPARTMENT

In the Matter of MONARCH LIFE INSURANCE
COMPANY,

Petitioner,

-against-

STATE TAX COMMISSION,

Respondent.

Argued, February 24, 1972.

Before:

HON. J. CLARENCE HERLIHY,
Presiding Justice,

HON. ELLIS J. STALEY, JR.,

HON. LOUIS M. GREENBLOTT,

HON. RICHARD D. SIMONS,

HON. WALTER B. REYNOLDS,

Associate Justices.

PROCEEDING under CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Third Judicial Department by order of the Supreme Court at Special Term, entered in Albany County) to review a determination of the State Tax Commission.

OLSON, SANFORD, HATT & FORNER (John F. Forner, Jr., of counsel) for petitioner, 90 State Street, Albany, N.Y. 12207

LOUIS J. LEFKOWITZ, Attorney General (Ruth Kessler Toch and Thomas P. Zolezzi, of counsel) for respondents, The Capitol, Albany, N. Y. 12224.

OPINION FOR CONFIRMANCE

REYNOLDS, J.

This is a proceeding under CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Third Judicial Department by order of the Supreme Court at Special Term, entered in Albany County) to review a determination of the State Tax Commission.

On May 28, 1965 the Springfield Insurance Company, a Massachusetts corporation, merged, pursuant to Massachusetts law, into petitioner Monarch Life Insurance Company, another Massachusetts corporation. As a result of the merger, petitioner, the surviving corporation, became vested by operation of law, with all of the assets of Springfield, including certain securities, which though physically located in Massachusetts, had New York State transfer agents. Petitioner, thereafter, sent the stock certificates together with duly executed stock powers to the New York transfer agents with direction to issue new certificates in its name. This the New York transfer agents refused to do without payment of the appropriate New York stock transfer taxes. Petitioner made such payments and then filled a timely application with the respondent requesting a refund of the same. The Commission denied the application and the instant proceeding ensued.

Subdivision 1 of section 270 of the Tax Law imposes a tax upon sales, memoranda of sales, agreements to sell, deliveries and transfers of stock or other certificates in a domestic or foreign association, company or corporation, including transfers of record ownership on the books of the corporation or other entity issuing the stock or certificates, whether such sales, deliveries or transfers pass legal title, beneficial interest or merely possession or use of the stock or other certificates (20 NYCRR §440.1 [a] [g]). And if any one of the taxable events specified in section 270 occurs within this State,

that is, if the sale, delivery or transfer of the stock or other certificates takes place in New York, the tax is payable (20 NYCRR §440.2). Transfer of record ownership undisputably took place in New York, and the question thus posed is whether such transfer passed legal title, beneficial interest, possession or use of the certificates of stock. While no court decisions covering this particular issue appear available, the Attorney General in situations similar to the present one has consistently taken the position (1913 Op. Atty. Gen. 373; and see, also, 1947 Op. Atty. Gen. 289; 1944 Op. Atty. Gen. 354; 1944 Op. Atty. Gen. 364; 1944 Op. Atty. Gen. 366):

* * * if the contract or sale or transfer is made or effectuated within the State of New York, or if, as is often the case, the transfer on the books of the corporation is necessary to effectuate or render complete the transfer of title to the stock or is an essential prerequisite to the exercise of full ownership to the transferee, and such transfer is made within the State of New York, a tax is payable as provided for by Section 270. If, on the other hand, the contract is made and executed without the State of New York and nothing is required to be done within the State to render complete the transfer of title to the beneficial ownership of the stock, the transaction is not subject to a tax merely because of the fact that a record of the transaction is kept [in this State] pursuant to the command of Section 276.

Thus since title to the securities automatically vested in the petitioner upon the merger under Massachusetts Law (section 19A of Chapter 175 of the General Laws of the Commonwealth of Massachusetts), unless it can be said that the transfer of the stock on the books of the respective corporations in New York was necessary to effectuate or render complete the transfer of title or was an essential prerequisite to the exercise of full ownership to the transferee, no tax should have been payable. It has consistently been held that the expression "legal title" as used in section 270 of the Tax Law

signifies the appearance of title as distinguished from a full and complete title (Travis v. Ann Arbor Co., 180 App. Div. 799, 801; Bonbright & Co. v. State of New York, 165 App. Div. 640) and pursuant to section 8-207 of the Uniform Commercial Code the issuer of stock is permitted to treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner until the stock or other certificate is duly presented for registration of transfer. Therefore, the transfer of the record ownership of the stock in New York not only was necessary to effectuate or render complete the transfer of title to the stock but actually passed the "legal title" to the stock. Accordingly, the respondent properly determined that a stock transfer tax was payable.

Petitioner's argument that the respondent's position is violative of the constitutional mandate that each state must give full faith and credit to the laws of its sister States is without merit. The respondent's position does not, as petitioner contends, ignore Massachusetts law with respect to mergers. Rather, the respondent's position is that, even though under Massachusetts law the merger vested petitioner with the title to the securities involved by operation of law, there was a taxable transfer of title in this State (see People ex rel. Hatch v. Reardon, 184 N.Y. 431, 448).

The determination should be confirmed, with costs.