

STATE OF NEW YORK  
STATE TAX COMMISSION

Application

In the Matter of the ~~Petition~~

of

BLALACK, WELLS ASSOCIATES, INC.:

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 21st day of February , 19 73, she served the within Notice of Decision (or Determination) by (certified) mail upon Blalack, Wells Associates, Inc. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Blalack, Wells Associates, Inc.  
76 Beaver 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

21st day of February , 19 73

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

Application  
In the Matter of the ~~Petition~~  
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of  
BLALACK, WELLS ASSOCIATES, INC:  
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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 21st day of February , 19 73, she served the within Notice of Decision (or Determination) by (certified) mail upon Philip J. O'Reilly, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Philip J. O'Reilly, Esq.  
Delaney, Mitchell & O'Reilly, Esqs.  
39 Broadway  
New York, New York 10006  
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

21st day of February , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BLALACK, WELLS ASSOCIATES, INC.:

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 21st day of February , 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Francis Lloyd, C.P.A.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Francis Lloyd, C.P.A.  
Peat, Marwick, Mitchell & Co.  
345 Park Avenue  
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

21st day of February , 1973

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**February 21, 1973**

**Blalock, Wells Associates, Inc.**  
**76 Beaver Street**  
**New York, New York**

**Gentlemen:**

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

Please take further notice that pursuant to **section 279-a of**  
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,

**Nigel G. Wright**

HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
BLALACK, WELLS ASSOCIATES, INC.	:	DECISION
for a Hearing to Review a Determination	:	
of Stock Transfer Taxes due pursuant to	:	
Article 12 of the Tax Law.	:	

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Blalack, Wells Associates, Inc., filed an application pursuant to section 279(a) of the Tax Law for a hearing to review a Notice of Determination dated January 16, 1970, of stock transfer taxes due under Article 12 of the Tax Law. A hearing was duly held before Nigel G. Wright, Hearing Officer, on January 18, 1971. The applicant was represented by Philip J. O'Reilly, Esq., of Delaney, Mitchell & O'Reilly and by Francis Lloyd, C.P.A. of Peat, Marwick, Mitchell & Co. and the Miscellaneous Tax Bureau was represented by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel). The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether a transfer of securities occurred in New York State when the employees of applicants New York Office would close sales only after receiving telephone approval from applicant's home office in California.

FINDINGS OF FACT

1. Applicant is a stockbroker and dealer with its principal place of business in San Marino, California. At that office it had sixty employees including four "traders" who worked solely on a

commission basis. It had an office at 76 Beaver Street, New York City, with thirty-five employees. These included order clerks who worked on a straight salary basis.

2. The securities here involved are not listed on any stock exchange, they are not of New York corporations and they usually are of interest especially to California or West Coast customers. These securities were listed with their "quotes" in the "pink sheets" of the National Quotation System. Taxpayer usually had about 150 different securities so listed. Only sales by taxpayer are involved; purchases are not involved in this assessment.

3. Transactions involving more than 100 shares had to be approved in advance by taxpayer's California office. It is only these sales which are here in issue. Transactions of less than 100 shares could be closed by the New York office without calling California although they would have to be confirmed with California after the trade was completed. These sales are not in issue. Certain special transactions, of over 100 shares could be closed by the New York office alone under special advance instructions giving the terms of such sales. These sales are not in issue. All paper work involved in all transactions was done at the California office and all confirmations of sales were mailed from California.

4. The method of making the sales in issue was as follows: a purchaser would telephone the taxpayer's New York office and talk to an order clerk. The order clerk would use another telephone to call the California office and relate the transaction to the people there. Upon receiving approval from California the order clerk would relay the message to the purchaser. Although it was

physically possible to hold one telephone to the other telephone so that the message from California would be heard directly by the purchaser in New York, there is no proof that this was ever done.

5. The amount of tax determined to be due by the notice of January 16, 1970, is \$31,411.88, of which \$10,093.58 has been paid. The sum of \$21,318.30 is here in dispute.

CONCLUSIONS OF LAW


The transactions are subject to tax. The purchaser's conversation with the order clerk in New York constituted an offer to buy or bid; the answer of the order clerk in New York constituted the acceptance of the contract in New York and a taxable sale then occurred. The communications between the order clerk and the California office are irrelevant.

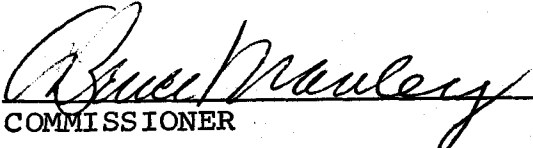
DECISION

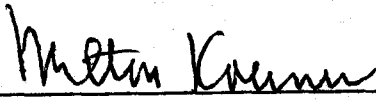
The Notice of Determination dated January 16, 1970, is affirmed.

DATED: Albany, New York  
February 21, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER