

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CONSOLIDATED BOWLING CORPORATION

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

Lynn Wilson, 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 20th day of July, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon CONSOLIDATED BOWLING CORPORATION (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Consolidated Bowling Corporation
P.O. Box 177
Lasalle Station
Niagara Falls, 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

20th day of July, 1973

Martha J. James

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

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State of New York
County of Albany

Lynn Wilson, 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 20th day of July, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon JACK E. GELLMAN,

ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Jack E. Gellman, Esq.

Gellman & Gellman

880 Military Road

Niagara Falls, 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

20th day of July, 1973

Jantha L. ...

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CONSOLIDATED BOWLING CORPORATION

For a Redetermination of a Deficiency or
a Refund of Stock Transfer
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Tax Law ~~for the Year(s)~~

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State of New York
County of Albany

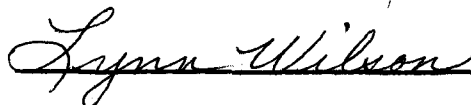
Lynn Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of July, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon BRYANT S. KURTZMAN, ESQ. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Bryant S. Kurtzman, Esq.
Gellman & Gellman
880 Military Road
Niagara Falls, 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

20th day of July, 1973







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, ~~XXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
July 20, 1973

Consolidated Bowling Corporation
P.O. Box 177
Lacalle Station
Niagara Falls, New York

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **279-a** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **90 days**
from 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 relative
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

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CONSOLIDATED BOWLING CORPORATION	:	DECISION
for a Hearing to review determinations of	:	
Stock Transfer Taxes due pursuant to	:	
Article 12 of the Tax Law.	:	

Consolidated Bowling Corporation filed an application pursuant to section 279(a) of the Tax Law for a hearing to review a determination of stock transfer taxes due dated August 1, 1963, in the amount of \$3,381.72 and a determination of stock transfer taxes due dated November 5, 1964, in the amount of \$46.00.

A hearing was held at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on November 9, 1964. The applicant was represented by Jack E. Gellman and Bryant S. Kurtzman of Gellman and Gellman of Niagara Falls, New York.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether taxable transfers of applicant's shares occurred under the circumstances indicated.

FINDINGS OF FACT

1. Consolidated Bowling Corporation, the applicant herein, was formed in New York on May 20, 1960. It has authorized 5,000,000 shares of ten cents par value stock. At no time did its issued shares exceed 2,140,000 shares.

2. The transfers here in question were transfers of the shares of Consolidated Bowling Corporation which arose directly or indirectly out of the acquisition on or about July 1, 1960, of other corporations by Consolidated Bowling Corporation. Consolidated Bowling Corporation

acquired all of the outstanding stock of six corporations engaged in operating bowling alleys. Five of these corporations (Beverly Lanes, Inc., Suburban Lanes, Inc., Price Bowling Lanes, Inc., West Goshen Lanes, Inc., and Plattsburg Lanes, Inc.) were acquired solely for the issuance of stock in Consolidated Bowling Corporation. The shares of the sixth company (King of Prussia Bowling Lanes, Inc.) were acquired by gift and purchase. Consolidated Bowling Corporation also acquired 65% of the outstanding shares of five other corporations, which were also engaged in the bowling alley business, 100% of the outstanding stock of three real estate corporations, and 50% of the outstanding stock of another real estate corporation (Military Road Realty, Inc.). In addition, Consolidated Bowling Corporation owns 80% of the stock of TIAM Italiana, SPA. Consolidated Bowling Corporation issued a Prospectus for the issuance of additional shares on June 29, 1961, a copy of which is in evidence.

3. The determination under review finds that on March 16, 1962, 26,773 shares were transferred from the name of Samuel Darlich into the name of his wife, Charlotte Darlich. These were one-half of the shares which had been listed in the name of Samuel Darlich when he had acquired them on or before September 26, 1961. Applicants have produced affidavits asserting that Samuel Darlich had been holding the shares simply as a nominee and custodian for Charlotte Darlich and because that arrangement was no longer necessary, the transfer in question was made. Applicants alleged, however, at the hearing, that the original issue should have been directly to Charlotte Darlich and that the company simply had made a mistake in the issuance of the shares.

4. The determination under review finds that on June 29, 1962, 1,000 shares were transferred from the name of Louis Bernstein to

the name of Eugene Truslow. Mr. Bernstein had acquired them on or before September, 1961. Applicant alleges that the original issue which was in exchange for stock of three real estate corporations effective July 1, 1960, was a mistake but applicant has not indicated what the interest of Mr. Truslow may have been.

5. The determination under review finds that on or about June 29, 1962, 763 shares out of 1,000 shares listed in the name of John Mostyka and 796 out of 1,000 shares listed in the name of Robert Mazza were transferred into the names of Sidney Horowitz and Arthur Matross, together. Applicant alleges that this was to correct a mistake as such shares had been issued in September, 1961 in return for the shares TIAM Italiana SPA of Rome, Italy and Horowitz and Matross had been shareholders in that corporation.

6. The determination under review finds that in 1961, 13,000 shares were donated to the company by J. Gellman, P. Gellman, Dautch and Ploski (Prospectus Page 9). Although it was intended that these shares be retired or alternately that they never be issued in the first place, it has not been shown by evidence that these intentions were carried out. The balance sheet in the Prospectus shows an entry for "donated surplus" in the amount of \$1,300.00, apparently the par value of these shares.

7. The determination under review finds that 35,000 shares to which Robert Millonzi was entitled upon the acquisition by the company of Beverly Lanes, Inc. and Suburban Lanes, Inc. were issued not to Robert Millonzi but were issued instead to Charles Diebold, thereby implying a transfer from Robert Millonzi to Charles Diebold. Applicant alleges that Diebold and Millonzi had always been partners with Millonzi holding the stock as a nominee only and that the transfer in question was merely that of a nominee to the true owner.

8. The determination under review finds that 2,500 shares which were listed on the books of the registrar in the name of Paul and Harry Dosberg together were issued in the names of Paul Dosberg and Harry Dosberg individually, thus implying an original issuance to Paul and Harry Dosberg as cotenants followed by a transfer from them to each one individually.

9. The determination under review finds that 3,750 shares which were issued to Joseph Davis were issued in exchange for shares of stock of a corporation, (Price Bowling Lanes, Inc.) which had been listed in the individual names of Margaret Davis, Joan Handle and Marshall Davis; thereby implying an original issuance of shares to Margaret Davis, Joan Handle and Marshall Davis and a subsequent transfer by them to Joseph Davis. Applicant alleges that Margaret Davis, Joan Handle and Marshall Davis were the children of Joseph Davis and merely custodians of any shares held by them and that Joseph Davis had been at all times the true owner of these shares.

10. The determination under review finds that 1,000 shares which were issued in the name of Walter and Laura Johnson jointly were issued in exchange for stock of a corporation, Military Road Realty, Inc., which had been owned individually and separately by Walter Johnson and Laura Johnson thereby implying an original issuance to them separately and a subsequent transfer to them jointly. Applicant alleges that the original joint issuance was pursuant to the request of the Johnson's or that it was a mistake.

11. The determination under review finds that 40,000 shares which were issued in the name of Philip Gellman were issued in exchange for stock of a corporation, (West Goshen Lanes, Inc.) which had been listed in the name of Rose Gellman thereby implying

an original issue to Rose Gellman and a subsequent transfer to Philip Gellman. Applicant alleges that the shares in the prior corporation had been in the name of Rose Gellman only as a "nominee and custodian" and that the true owner was at all times Philip Gellman.

12. The determination under review finds that 35,504 shares which were issued to Leo Ploski were issued for shares of a corporation (Plattsburg Lanes, Inc.) which had been listed in the name of Rosena Ploski thereby implying an original issuance to Rosena Ploski followed by a transfer to Leo Ploski. Applicant alleges that it had merely made a mistake in the issuance of shares, and that Rosena Ploski was at all times the beneficial owner of these shares with the result that Leo Ploski is merely a custodian of said shares.

13. The determination under review finds that on May 27, 1964, 2,300 shares of 4,500 shares held by Frank M. Gellman were transferred; 2,200 shares to Aaron Gellman and 100 shares to Sigmund Gellman. Applicant now concedes the transfer of the 100 shares is taxable as a transfer from Aaron Gellman to Sigmund Gellman. As to the 2,200 shares, applicant alleges that they were owned by Aaron Gellman and Frank Gellman as equal partners, and the transfer in question was merely to correct a mistake in the issuance of the shares.

14. No transfer described herein was accompanied by an exemption certificate.

CONCLUSIONS OF LAW

A. A transfer (see paragraphs 3, 9, 11, and 12) between an owner and a custodian of the owner is taxable if there is no exemption certificate (Tax Law section 270 subd. 5; Reg. 20 NYCRR 443.1(d)(1)(V)).

The allegation that such custodian is also a "nominee" does not change this result since the statute does not provide for an exemption for individual nominees and since, further, no business purpose has been shown for the appointment of a nominee in the situations described here.

The statute provides no exemption for transfers between individuals and nominees and in the absence of a specific statutory exemption it is generally assumed that every delivery and record transfer is taxable. The Attorney General held in 1909 that a transfer between a corporation and a nominee was taxable under the then existing statute which did not provide for corporate nominees. See 1909 Op. Atty Gen. 383 where it is said (at 385) that "a contrary interpretation would afford a dangerous precedent and in every case the imposition of the tax would depend upon the intent of the parties rather than upon the physical act of transfer. In other words, the taxing officers would be dependent upon a certificate of an interested party rather than upon a physical act in determining whether or not to impose the tax".

The absence of any business purpose in appointing a nominee in the situations described here is apparent. A nominee, of course, is a person who holds bare record title to stock and does so solely for the purpose of convenience in effecting the record transfer of stock which would otherwise be held in a form which would require elaborate procedures for transfer. Since it would seem that an individual acting as owner can transfer stock just as easily as an individual acting as a "nominee" it would be highly unusual for an individual to have any reason to appoint a nominee. Such reasons have not been shown in this case.

B. The allegations (see paragraphs 7 and 13) that a partnership had owned the shares in question does not avoid the tax since a transfer from a partnership to an individual partner is itself taxable. (See Reg. 20 NYCRR 447.1(a)(8).) Similarly, the transfer (see paragraph 8) between cotenants and one of the cotenants individually is taxable. (See Reg. 20 NYCRR 447.1 (a)(15)), and the transfer (see paragraph 10) between joint tenants and one of the joint tenants individually is taxable (see Reg. 20 NYCRR 447.1(a)(17)).

C. The donation of shares to the corporation (see paragraph 6) must be considered a taxable transfer since it has not been shown that such shares were cancelled and returned to unissued status (see Application of Hernstadt S.T.C., January 19, 1971, C.C.H. New York Tax Rep. transfer binder ¶99-361).

D. The allegations that certain of these transfers (see paragraphs 8 and 10) were original issues of stock and that intermediate transfers cannot be implied must be rejected. (Opinion of Counsel, March 30, 1965, C.C.H. New York Tax Rep. transfer binder ¶98-515.)

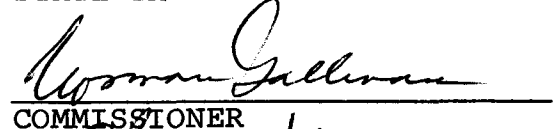
E. The allegations that certain shares were issued incorrectly (see paragraphs 3, 4, 5, 10, 12, and 13) have not been adequately substantiated especially in the light of the long-time intervals before the alleged mistakes were corrected.

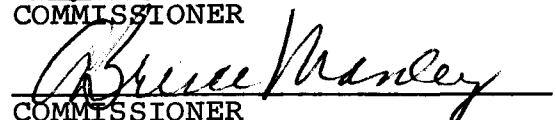
DETERMINATION

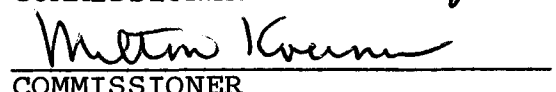
The determination under review is found to be correct in its entirety.

DATED: Albany, New York
July 20, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER