

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STUYVESANT 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

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 21st day of February, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon STUYVESANT
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:

The Stuyvesant Insurance Company
1105 Hamilton Street
Allentown, Pennsylvania

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.

Martha K. K... ..
Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STUYVESANT 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

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 21st day of February, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon TICKTIN & BLEICH

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Ticktin & Bleich
c/o David A. Ticktin, Esq.
130 John Street

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.

Madeline Tannen

Lynn Wilson



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

The Stuyvesant Insurance Company
1105 Hamilton Street
Allentown, Pennsylvania

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

In the Matter of the Petition	:	
of	:	
STUYVESANT INSURANCE COMPANY	:	DECISION
for a Hearing to review a Determination of	:	
Stock Transfer Taxes due under Article 12 of	:	
the Tax Law.	:	

The Stuyvesant Insurance Company filed an application under section 279(a) of the Tax Law for a hearing to review a determination of stock transfer taxes due under Article 12 of the Tax Law. The hearing was waived by applicant and the determination in issue was submitted to the State Tax Commission for review on the file of the Miscellaneous Tax Bureau including papers submitted by applicant. Such file has been duly examined and considered.

ISSUES

The issues in this case are:

A. Whether shares, otherwise taxable, are exempt from stock transfer tax under section 270(c)(11) of the Tax Law when they are transferred to a controlled corporation within the meaning of section 351 of the Internal Revenue Code. Whether the approval of the State Tax Commission, under section 270 subdivision 6 of the Tax Law, to keep books outside the State is necessary where such books of an insurance company are kept outside the State by permission of the Superintendent of Insurance under section 26(a) of the Insurance Law.

B. Whether the maintenance of books and records out-of-state, if now approved by the State Tax Commission under section 270 sub-

division 6 of the Tax Law, could affect the taxability of shares transferred on such books prior to the date of any application for such approval.

C. Whether transfers of stock are taxable when they do not otherwise take place in New York but would have been recorded on a transfer ledger in New York except for the fact that such ledger was kept outside the state contrary to the provisions of section 270 subdivision 6 of the Tax Law.

FINDINGS OF FACT

1. Stuyvesant Insurance Company is organized under the Insurance Law of New York State with its principal place of business in Allentown, Pennsylvania, and with a New York office on John Street in New York City. It has 590,000 shares outstanding. Prior to 1968, 589,117.8 shares of Stuyvesant were owned by the General Acceptance Corporation and, since then, by its successors, all with a principal place of business at Allentown, Pennsylvania. Stuyvesant did not maintain its stock certificate book and transfer ledger in New York. It has had no transfer agent in New York since 1963.

2. General Acceptance Corporation changed its name to GAC Corporation in July, 1968. GAC had recently entered into manufacturing operations and wished to be relieved of the legal restrictions on borrowings and investments which were applicable to it as a finance company. It decided to function solely as a holding company and to affect a complete segregation of the finance and insurance operations from all other operations. Accordingly GAC formed a new wholly owned subsidiary, General Acceptance Corporation (which has since changed

its name to GAC Finance Inc.) and transferred to it both the assets and the liabilities of its former finance division including cash, receivables, reserves etc., as well as the shares of Stuyvesant Insurance Company in exchange for its entire issue of common stock and certain preferred stock. This was ruled by the U. S. Treasury to result in the recognition of no gain or loss for income tax purposes by reason of the provisions of section 351 of the Internal Revenue Code.

3. The transfers of shares here in issue took place between February 16, 1966, and July 1, 1968. A tax of \$14,750.50 has been computed to be due thereon. Of this the sum of \$14,727.93 is attributable to a transfer on July 1, 1968, of 589,117 shares from GAC Corporation (formerly General Acceptance Corporation) to its subsidiary General Acceptance Corporation (now GAC Finance Inc.). The negotiations and agreements to transfer all such stock, the delivery of shares, and the recording of the transactions by Stuyvesant all took place in Pennsylvania.

4. The "books of account" of Stuyvesant are kept outside of New York State and at the principal office of Stuyvesant in Allentown, Pennsylvania. This is pursuant to a resolution of the Board of Directors dated February 19, 1963, and approved by the Superintendent of Insurance of the State of New York on February 27, 1963, under section 26(a) of the Insurance Law. The same resolution provided that there shall be maintained at the New York office of Stuyvesant copies of the charter and by-laws, list of stockholders, minutes of directors and shareholders meetings, the annual statement as filed with the New York Insurance Department and the reports of examinations by such Department. It provided further that any and all of the books of

account and records should be made available on demand of the Insurance Department at the New York office of Stuyvesant.

5. The State Tax Commission has never approved the keeping of stock certificate books and transfer ledgers outside the State as provided for by section 270 subdivision 6 of the Tax Law. The applicant had not requested such approval prior to the transfers here in issue.

CONCLUSIONS OF LAW

A. The mere transfer of shares to a controlled corporation as described in section 351 of the Internal Revenue Code does not qualify for the exemption granted by section 270(c) subdivision 11 of the Tax Law to reorganizations of the types there specified.

B. To be effective under the Tax Law, the approval to keep books and records outside the State must be granted by the State Tax Commission, under section 270 subdivision 6 of the Tax Law. The permission of another governmental agency, which necessarily has no interest in stock transfer taxes and which grants such permission solely for its own purposes on conditions reflecting solely its own convenience is irrelevant for tax purposes.

C. The approval of the State Tax Commission to keep books outside the State under section 270 subdivision 6 of the Tax Law cannot and will not be granted as of a date prior to any application for such approval.

D. The transfer of shares here in issue would have been taxable as a transfer on the books of Stuyvesant, as provided in section 270 subdivision 1 of the Tax Law, if such books had been kept in New York


as provided by section 276 of the Tax Law and the regulations of the Commission thereunder (20 NYCRR 446.2). The moving of such books outside the State when contrary to law cannot be recognized as relevant to tax liability. It would be contrary to public policy if the tax could be avoided or evaded by an act which is contrary to law. The tax must be applied as if all laws had been observed.

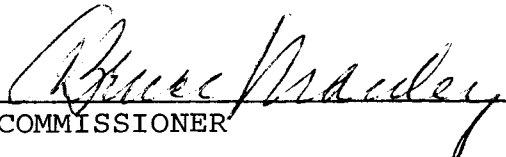
DECISION

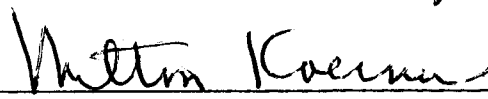
The determination under review is affirmed.

DATED: Albany, New York
February 21, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER