STATE OF NEW YORK STATE TAX COMMISSION

| In the Matter of the Petition | |
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| | : |
| of | |
| FIRST NATIONAL BANK OF MEMPHIS | : |
| Hearing with respect to | : |
| For a Rodern minakkon six XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX | ухх х |
| xxxxxxxx Stock Transfer | : |
| | the |
| Tax Law for the Year(ϵ) 1973 | : |

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CEREDENED) MAIL

State of New York County of Albany

Katherine D. Manly , 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 27th day of February , 1975, she served the within Notice of Reconstructor Determination) by KREAKERS mail upon Cindy M.

Heagy (REPRESENTED TO A Securely sealed postpaid proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Personal Trust Officer First National Bank of Memphis Box 84 Memphis, Tennessee 38101 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 **trepresentative xxf** petitioner herein and that the address set forth on said wrapper is the last known address of the **trepresentative** petitioner.

Sworn to before me this

27th day of February , 1975. 1. Ac

Jackenne D. Manly

AD-1.30 (1/74)



STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION HEARING UNIT

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT A. BRUCE MANLEY MILTON KOERNER BUILDING 9, ROOM 214-A STATE CAMPUS ALBANY, N.Y. 12227

AREA CODE 518

SECRETARY TO COMMISSION

EDWARD ROOK

ADDRESS YOUR REPLY TO

MR.WRIGHT 457-2655 MR.LEISNER 457-2657 MR.COBURN 457-2896

DATED: Albany, New York

February 27, 1975

Mrs. Cindy M. Heagy Personal Trust Officer First National Bank of Memphis Box 84 Memphis, Tennessee 38101

Dear Mrs. Heagy:

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

Please take further notice that pursuant to Section(\not) **279-a** of the Tax Law, any proceeding in court to review an adverse decision 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.

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application : of :

FIRST NATIONAL BANK OF MEMPHIS :

DETERMINATION

for a Hearing with respect to Stock Transfer Taxes assessed pursuant to Article 12 of the Tax Law for the Year 1973.

The First National Bank of Memphis filed an application under section 280 of the Tax Law for a refund of stock transfer taxes in the amount of \$44.30 paid under Article 12 of the Tax Law.

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In lieu of a hearing, the applicant submits his case for decision on the file of the Miscellaneous Tax Bureau. Said file has been duly examined and considered.

ISSUE

The issue in this case is whether the failure to have an exemption certificate as required by section 270(j) of the Tax Law on a transfer of stock may subsequently be rectified so that a refund of taxes paid may be made.

FINDINGS OF FACT

The applicant, First National Bank of Memphis, is the custodian for securities owned by Mrs. Minna G. Herff.

On August 10, 1973, applicant mailed certain securities which were registered in the name of Mrs. Herff to the First National City Bank of New York, transfer agent, to be transferred into the name of applicant's nominee, Central Memphis Company.

The securities were accompanied by a certificate that no sale of such securities were involved and a check for stock transfer taxes at the "no-sale" rate. No other certificate was attached. A claim was made for refund of the stock transfer taxes paid. In connection therewith, certificates of tax exemption, undated, were submitted to the Department claiming an exemption under section 270(j)(e) of the Tax Law.

CONCLUSIONS OF LAW

The refund is denied.

Although the transaction is otherwise exempt from tax under section 270-5(e) of the Tax Law, in this case no exemption certificate accompanied the transfer and it has been the Commissions' consistent position that the tax applies in such situations. (See <u>Craig, et al.</u> (as trustees of Springfield Union Employees Beneficial Fund) <u>v. Bates</u> 44 Misc. 2d 432.)

DATED: Albany, New York February 27, 1975 STATE TAX COMMISSION

nna PRESIDENT