

STATE TAX COMMISSION

of :

DETERMINATION

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

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.

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.

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

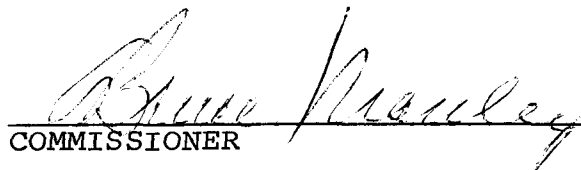
The refund is denied.

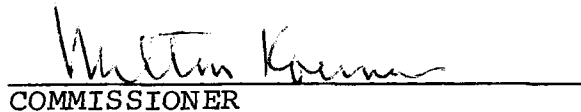
Although the transaction is otherwise exempt from tax under section 270-5(e) of the Tax Law, in this case no exemption certificate accompanied the transfer and it has been the Commissions' consistent position that the tax applies in such situations. (See Craig, et al. (as trustees of Springfield Union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

DATED: Albany, New York
February 27, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER