

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BANKERS TRUST 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

JANET MACK

, 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 18th day of December, 1975, she served the within

Notice of Decision ~~(or Determination)~~ by ~~(certified)~~ mail upon Bankers Trust

Company

~~(representative of)~~ the petitioner in the within

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

wrapper addressed as follows: Bankers Trust Company

16 Wall Street

New York, New York 10015

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)~~  
~~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

18th day of December, 1975.

Mary Hoff

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
:  
of  
:  
BANKERS TRUST 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

JANET MACK, 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 18th day of December, 1975, she served the within  
Notice of Decision (~~for Determination~~) by (~~certified~~) mail upon Thalia Ernstoff, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Thalia Ernstoff, Esq.  
Bankers Trust Company  
16 Wall Street  
New York, New York 10015  
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

18th day of December, 1975

Mary Groff

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

DATED: Albany, New York  
December 18, 1975

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER  
(518) 457-3336  
~~XXXXX~~  
457-3850

**Bankers Trust Company**  
**16 Wall Street**  
**New York, New York 10015**

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

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
BANKERS TRUST COMPANY	:	
for a Hearing to Review a Determination	:	DECISION
of Taxes due or of a Refund of taxes	:	
denied under the Stock Transfer Tax	:	
Law, Article 12 of the Tax Law.	:	

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Bankers Trust Company, 16 Wall Street, New York, New York 10015, filed an application under sections 279(a) and 280 of the Tax Law for a hearing to review a determination denying a refund of stock transfer taxes paid under Article 12 of the Tax Law and to review a determination of stock transfer taxes due of Article 12 of the Tax Law.

The refund in issue is for \$2,500.00 expended for transfer stamps on certificates representing 842,009 shares; the amount of tax being computed under Tax Law section 270-a(2) on a "single taxable sale."

The determination of tax due in issue was asserted on May 2, 1972, and is in the amount of \$39,600.46 computed on a transfer of 842,009 shares at two and a half cents a share for \$21,050.23 and a "retransfer" of the same shares for a second tax of like amount and giving credit for the \$2,500.00 already paid.

A hearing was duly held on March 28, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The applicant was represented by

Thalia Ernstoff, Esq. The Miscellaneous Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq. The record of said hearing has been duly examined and considered.

#### ISSUES

The issues in this case are (a) whether a taxable transfer occurred when entries of transfer were made on the transfer agent's books contingent upon there being no "stop order" and such entries were later reversed; (b) whether the "reversing entries" were also a taxable transfer and (c) whether the tax, if applicable, can be computed under the provisions of section 270-a(2) of the Tax Law relating to a "single taxable sale" in New York.

#### FINDINGS OF FACT

1. Bankers Trust Company, the applicant herein, through its Corporate Agency Department at 485 Lexington Avenue, New York City, is the transfer agent for the twenty-five cent par value common stock of Yardney Electric Corporation, Inc.

2a. The alleged transfers in this case involve certificates representing 842,009 shares. The transfers involved three corporations, each with its principal office in Los Angeles, California; Whittaker Corporation, Whittaker Creative Enterprises and Whittaker Power Systems Corporation.

2b. The two alleged transfers in this case are as follows:  
(a) a transfer on March 23, 1970, from the name of Whittaker Corporation to the name of Whittaker Power Systems Corporation on which \$2,500.00 of stock transfer stamps were attached and (b) a transfer on May 7, 1970, from the name of Whittaker Power Systems Corporation to Whittaker Corporation.

3. Whittaker Corporation had acquired its shares in Yardney from a Michael N. Yardney and Susanne M. Yardney. These shares had not been registered under the Federal Securities Act of 1933. The opinion of legal counsel to Yardney addressed to Bankers Trust Company was that the transaction was not a public offering, was not subject to registration and that any subsequent transfer by Whittaker would be subject to prior compliance with the Securities Act. No legend indicating a restriction or stop was placed on certificate CU 546.

4. On February 12, 1970, Whittaker Corporation mailed certificate CU 546 to Bankers Trust with a letter of instructions to issue nine new certificates to Whittaker Creative Enterprises and to deliver those certificates back to the Whittaker Corporation. Executed assignments were sent under separate cover.

5. On March 10, 1970, Whittaker Corporation mailed a letter amending the previous letter of instructions by directing the transfer to be made instead to Whittaker Power Systems Corporation and again requesting delivery back to the Whittaker Corporation. An executed assignment was enclosed and also a check for \$2,500.00 to cover stock transfer taxes.

6. On March 10, 1970, Bankers Trust attached stock transfer stamps in the amount of \$2,500.00 to certificate CU 546. This amount is based upon the applicability of section 270-a(2) of the Tax Law relating to a "single taxable sale" within New York State.

7a. On March 23, 1970, Bankers Trust made entries on its transfer sheets debiting certificate CU 546 to "Certificates Surrendered" and crediting to "Certificates Issued" a new certificate CU 554 in the

name of Whittaker Power Systems Corporation.

7b. Also on March 23, 1970, the new certificate CU 554 was sent to the registrar for Yardney, Chase Manhattan Bank and was registered by them and returned to Bankers Trust.

7c. On the same day, March 23, 1970, and at some time after registration of the new certificate CU 554, Bankers Trust first noticed the restricted nature of the old certificate. They then stamped the old certificate 546 as "reinstated."

8. On May 7, 1970, the old certificate CU 546 was "reinstated" by crossing out the transfer entries on the transfer sheets. The old certificate was sent to the registrar, Chase Manhattan Bank, and was stamped "reinstated" as of March 23, 1970, by them. The new certificate was stamped "cancelled" by Bankers Trust. The old certificate was returned by mail to Whittaker Corporation with a letter stating "... we are not refusing transfer but are returning certificate pending a release from the company counsel." This certificate, of course, still had the stock transfer tax stamps attached. Later a new certificate was issued to Whittaker Corporation to replace the old certificate CU 546, but without any stock transfer stamps. Bankers Trust reimbursed Whittaker for the \$2,500.00 they had paid for the stamps on certificate CU 546.

9. It was the normal business practice of Bankers Trust to check their records for "stop orders" only after entries had been made on their own books and a new certificate had been sent to the registrar. If a "stop order" did exist Bankers Trust would attempt

to obtain releases and if they couldn't then they would "reverse" the transaction.

CONCLUSIONS OF LAW

So long as the entries on the transfer books were not disclosed to parties who might obtain rights thereunder and the entries that were made were not in fact authorized by law, then the said entries are a matter solely of the internal bookkeeping methods of the transfer agent's business organization and do not give rise to a transfer tax.

The stamps may be considered to have been erroneously affixed and a refund allowed under Tax Law section 280 (see 1943 Op. Atty. Gen. 399).

The refund is allowed.

DATED: Albany, New York  
December 18, 1975

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER