

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

SYNCAP ENTERPRISES, INC. and of: SEYMOUR COHEN, AFFIDAVIT OF MAILING
SIDNEY SMALL, BERNARD ALLAN SILVER, EUGENE WALLMAN, OF NOTICE OF DECISION
EDWARD PALONE, WILLIAM LANDESMAN, each : BY ~~CERTIFIED~~ MAIL
individually :

For a Redetermination of a Deficiency or
a Refund of Stock Transfer :
Taxes under Article (x) 12 of the
Tax Law. ~~For the Year (x)~~ :

State of New York
County of Albany

MARY GROFF , 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 10th day of February , 1976 , she served the within
Notice of Decision ~~(for Determination)~~ by ~~(certified)~~ mail upon SYNCAP ENTERPRISES, INC.

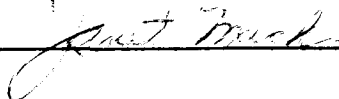
~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Syncap Enterprises, Inc.
c/o Eugene Wallman, Esq.
55 Liberty Street
New York, NY 10005

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

10th day of February , 1976.



Notary Public



Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

SYNCAP ENTERPRISES, INC. and of: SEYMOUR COHEN, AFFIDAVIT OF MAILING
SIDNEY SMALL, BERNARD ALLAN SILVER, EUGENE WALLMAN, OF NOTICE OF DECISION
EDWARD PALONE, WILLIAM LANDESMAN, each : BY ~~CERTIFIED~~ MAIL
individually :
For a Redetermination of a Deficiency or
a Refund of Stock Transfer :
Taxes under Article (x) 12 of the
Tax Law ~~for the year (x)~~ :

State of New York
County of Albany

MARY GROFF , 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 10th day of February , 1976, she served the within
Notice of Decision (~~xx Determination~~) by (~~certified~~) mail upon SEYMOUR COHEN

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Seymour Cohen
97-10 62nd Drive
Queens, NY

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~~
~~xx~~) 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

10th day of February , 1976

[Signature]

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Decision~~ Application

of

SYNCAP ENTERPRISES, INC. and of: SEYMOUR COHEN, AFFIDAVIT OF MAILING
SIDNEY SMALL, BERNARD ALLAN SILVER, EUGENE WALLMAN, OF NOTICE OF DECISION
EDWARD PALONE, WILLIAM LANDESMAN, each : BY ~~(CERTIFIED)~~ MAIL
individually :

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)~~ :

State of New York
County of Albany

MARY GROFF , 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 10th day of February , 1976 , she served the within
Notice of Decision ~~(for Redetermination)~~ by ~~(certified)~~ mail upon SIDNEY SMALL

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Sidney Small
1457 Broadway
New York, NY

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

10th day of February , 19 76

Just Mack

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

SYNCAP ENTERPRISES, INC. and of: SEYMOUR COHEN, AFFIDAVIT OF MAILING
SIDNEY SMALL, BERNARD ALLAN SILVER, EUGENE WALLMAN, OF NOTICE OF DECISION
EDWARD PALONE, WILLIAM LANDESMAN, each : BY ~~(CERTIFIED)~~ MAIL
individually :

For a Redetermination of a Deficiency or
a Refund of Stock Transfer :
Taxes under Article ~~(ss)~~ 12 of the
Tax Law. ~~For the Year(s)~~ :

State of New York
County of Albany

MARY GROFF , 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 10th day of February , 1976 , she served the within
Notice of Decision ~~(for Redetermination)~~ by ~~(certified)~~ mail upon BERNARD ALLAN SILVER

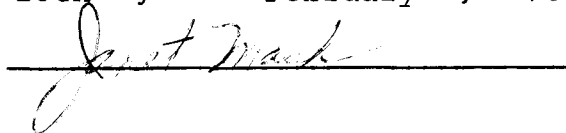
~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Bernard Allan Silver
55 West 42nd Street
New York, NY

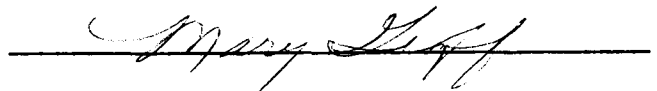
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

10th day of February , 1976





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

SYNCAP ENTERPRISES, INC. and of: SEYMOUR COHEN, AFFIDAVIT OF MAILING
SIDNEY SMALL, BERNARD ALLAN SILVER, EUGENE WALLMAN, OF NOTICE OF DECISION
EDWARD PALONE, WILLIAM LANDESMAN, each : BY ~~CERTIFIED~~ MAIL

individually :
For a Redetermination of a Deficiency or
a Refund of Stock Transfer :
Taxes under Article (x) 12 of the
Tax Law ~~for the year (x)~~ :

State of New York
County of Albany

MARY GROFF , 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 10th day of February , 1976, she served the within
Notice of Decision (~~xx Determination~~) by (~~certified~~) mail upon EUGENE WALLMAN

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Eugene Wallman
101 Central Park West
New York, NY 10023

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~~
~~xx~~) 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

10th day of February , 1976

John M. [Signature]

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

SYNCAP ENTERPRISES, INC. and of: SEYMOUR COHEN, AFFIDAVIT OF MAILING
SIDNEY SMALL, BERNARD ALLAN SIVLER, EUGENE WALLMAN, OF NOTICE OF DECISION
EDWARD PALONE, WILLIAM LANDESMAN, each : BY ~~(CERTIFIED)~~ MAIL
individually :

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)~~ :

State of New York
County of Albany

MARY GROFF , 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 10th day of February , 19 76, she served the within
Notice of Decision ~~for Redetermination~~ by ~~(certified)~~ mail upon EDWARD PALONE

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Edward Palone
135 Whitman
Brooklyn, NY

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)~~
~~xxx~~ 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

10th day of February , 1976.

Just Mac

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

SYNCAP ENTERPRISES, INC. and of: SEYMOUR COHEN, AFFIDAVIT OF MAILING
SIDNEY SMALL, BERNARD ALLAN SILVER, EUGENE WALLMAN, OF NOTICE OF DECISION
EDWARD PALONE, WILLIAM LANDESMAN, each : BY ~~(CERTIFIED)~~ MAIL
individually :

For a Redetermination of a Deficiency or
a Refund of Stock Transfer :
Taxes under Article ~~(s)~~ 12 of the
Tax Law. ~~for the Year (x)~~ :

State of New York
County of Albany

MARY GROFF , 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 10th day of February , 1976 , she served the within
Notice of Decision ~~(or Determination)~~ by ~~(certified)~~ mail upon WILLIAM LANDESMAN

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. William Landesman
66-10 149th Street
Flushing, Queens, NY

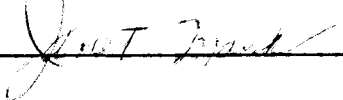
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~or~~ 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

10th day of February , 1976





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

SYNCAP ENTERPRISES, INC. and of: SEYMOUR COHEN, AFFIDAVIT OF MAILING
SIDNEY SMALL, BERNARD ALLAN SILVER, EUGENE WALLMAN OF NOTICE OF DECISION
EDWARD PALONE, WILLIAM LANDESMAN, each :
individually : BY ~~(CERTIFIED)~~ MAIL

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)~~ :

State of New York
County of Albany

MARY GROFF , 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 10th day of February , 19 76, she served the within
Notice of Decision (~~on Determination~~) by (~~registered~~) mail upon DANIEL L. DRIESMAN, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Daniel L. Driesman, Esq.
26 Court Street
Brooklyn, NY 11242

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

10th day of February , 1976.

Just Mac

Mary Groff



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518

STATE TAX COMMISSION

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 10, 1976

Syncap Enterprises, Inc.
c/o Eugene Wallman, Esq.
55 Liberty Street
New York, NY 10005

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,

PAUL GREENBERG
XXXXXXXXXXXXXXXXXXXX
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 10, 1976

Mr. Seymour Cohen
97-10 62nd Drive
Queens, NY

Dear Mr. Cohen:

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

Please take further notice that pursuant to
Section (x) **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,

PAUL GREENBERG
~~XXXXXXXXXXXX~~
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau



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

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 10, 1976

Mr. Sidney Small
1457 Broadway
New York, NY

Dear Mr. Small:

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

Please take further notice that pursuant to
Section ~~(a)~~ **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,

PAUL GREENBERG
HEARING UNIT
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)



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

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 10, 1976

Mr. Bernard Allan Silver
55 West 42nd Street
New York, NY

Dear Mr. Silver:

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

Please take further notice that pursuant to
Section (a) **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,


PAUL GREENBERG
~~XXXXXXXXXXXXXXXXXXXX~~
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 10, 1976

Mr. Eugene Wallman
101 Central Park West
New York, NY 10023

Dear Mr. Wallman:

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

Please take further notice that pursuant to
Section(a) **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,

PAUL GREENBERG
ACTING DIRECTOR
TAX APPEALS

Enc.

cc: Petitioner's Representative
Law Bureau



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

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 10, 1976

Mr. Edward Palone
135 Whitman
Brooklyn, NY

Dear Mr. Palone:

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,

PAUL GREENBERG
XXXXXXXXXXXXXXXXXXXX
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau



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

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 10, 1976

Mr. William Landesman
66-10 149th Street
Flushing, Queens, NY

Dear Mr. Landesman:

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

Please take further notice that pursuant to
Section (a) **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,

Paul Greenberg
PAUL GREENBERG

XXXXXXXXXXXXXXXXXXXX
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application
of
SYNCAP ENTERPRISES, INC.
and of:
SEYMOUR COHEN
SIDNEY SMALL
BERNARD ALLAN SILVER
EUGENE WALLMAN
EDWARD PALONE
WILLIAM LANDESMAN
each individually
for a hearing to review a determination
of taxes due or the denial of a tax
refund under the Stock Transfer Tax Law,
Article 12 of the Tax Law.

DECISION

SynCap Enterprises, Inc. and Seymour Cohen, Sidney Small, Bernard Silver, Eugene Wallman, Edward Palone, and William Landesman each filed an application for a hearing to review a determination of stock transfer tax due under section 279-a of the Tax Law for stock transfer taxes under Article 12 of the Tax Law.

A hearing was duly held on December 11, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The applicants

were represented by Daniel L. Driesman, Esq. The Miscellaneous Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the reacquisition of outstanding shares by the issuing corporation is subject to tax under section 270 subdivision 1 of the Tax Law, which imposes such a tax unless such shares are cancelled pursuant to section 515 of the Business Corporation Law or unless within one year of the reacquisition, such shares are cancelled by amendment to the certificate of incorporation or by action of its Board of Directors.

FINDINGS OF FACT

1. Syncap Enterprises, Inc. was organized in New York in 1969. Its business was to be the acquisition of fast food lunch-eonettes and it anticipated a public offering of stock at 10 cents a share. Stock was issued to nine persons, the seven individual applicants herein: Seymour Cohen, Sidney Small, Bernard Silver, Eugene Wallman, Edward Palone and William Landesman, and to two other individuals: Henry Cohen and Robert Runyon. Mr. Seymour Cohen was president and Mr. Wallman was secretary. Although one underwriter did execute a letter of intent, he backed out when the stock market fell in early 1970. Attempts to locate

another underwriter failed. Other than to open a bank account the corporation never did any business during the time it was controlled by all of the original stockholders.

2. On or about January 25, 1971, the stockholders and directors of Syncap met at the offices of Mr. Wallman. They resolved that the corporation should redeem the shares in question and they should be cancelled with the stated capital being reduced accordingly. However no minutes of said meeting were kept and no other action was taken.

3. The corporation issued checks on January 25, 1971, to William Landesman, Sidney Small and Bernard Silver. It issued other checks on February 19, 1971, to Seymour Cohen, Edward Palone and to Eugene Wallman. All checks were issued at the rate of 10 cents a share. One shareholder, Mr. Robert Runyon decided to keep his shares and as the sole shareholder used the corporate entity for other purposes. After February 19, 1971, the shareholders involved in this proceeding had no control over the corporation.

4. A determination of tax due (at one-and-one quarter cents a share) was issued to each of the following:

Syncap Enterprises, Inc. in the amount of \$4,975.00, later reduced by \$31.25 to \$4,943.75; Seymour Cohen in the amount of \$1,500.00; Sidney Small, in the amount of \$765.62; Bernard Silver

in the amount of \$631.25; Eugene Wallman in the amount of \$650.00; Edward Palone in the amount of \$765.63 and Henry Cohen in the amount of \$31.25. Henry Cohen has paid the tax determined against him.

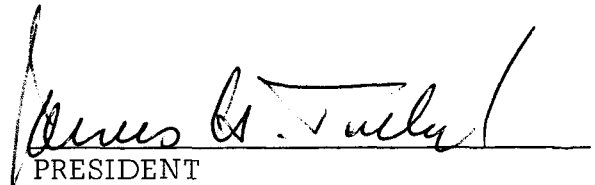
CONCLUSIONS OF LAW

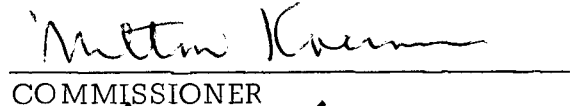
The shares in question were not within one year cancelled by an appropriate amendment to the corporation's certificate of incorporation or by action of the Board of Directors nor were they "on reacquisition" cancelled pursuant to the provisions for cancellation of shares by the board "at the time of reacquisition or at any time thereafter". (See Tax Law Section 270 Subdivision 1; Reg. 20 HYCRR 440.1(2)(3); Application of William H. Hernstadt, S.T.C. January 19, 1971.

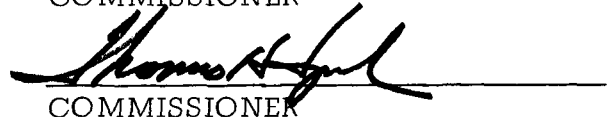
The determination under review is correct and is due.

Dated: Albany, New York
February 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



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

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 10, 1976

Mr. Seymour Cohen
97-10 62nd Drive
Queens, NY

Dear Mr. Cohen:

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,

PAUL GREENBERG
~~HEARING UNIT~~
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

SYNCAP ENTERPRISES, INC.

and of:

SEYMOUR COHEN

SIDNEY SMALL

BERNARD ALLAN SILVER

EUGENE WALLMAN

EDWARD PALONE

WILLIAM LANDESMAN

each individually

DECISION

For a hearing to review a determination
of taxes due or the denial of a tax
refund under the Stock Transfer Tax Law,
Article 12 of the Tax Law.

SynCap Enterprises, Inc. and Seymour Cohen, Sidney Small,
Bernard Silver, Eugene Wallman, Edward Palone, and William Landesman
each filed an application for a hearing to review a determination
of stock transfer tax due under section 279-a of the Tax Law for
stock transfer taxes under Article 12 of the Tax Law.

A hearing was duly held on December 11, 1973, at the
offices of the State Tax Commission, 80 Centre Street, New York
City, before Nigel G. Wright, Hearing Officer. The applicants

were represented by Daniel L. Driesman, Esq. The Miscellaneous Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the reacquisition of outstanding shares by the issuing corporation is subject to tax under section 270 subdivision 1 of the Tax Law, which imposes such a tax unless such shares are cancelled pursuant to section 515 of the Business Corporation Law or unless within one year of the reacquisition, such shares are cancelled by amendment to the certificate of incorporation or by action of its Board of Directors.

FINDINGS OF FACT

1. Syncap Enterprises, Inc. was organized in New York in 1969. Its business was to be the acquisition of fast food lunch-eonettes and it anticipated a public offering of stock at 10 cents a share. Stock was issued to nine persons, the seven individual applicants herein: Seymour Cohen, Sidney Small, Bernard Silver, Eugene Wallman, Edward Palone and William Landesman, and to two other individuals: Henry Cohen and Robert Runyon. Mr. Seymour Cohen was president and Mr. Wallman was secretary. Although one underwriter did execute a letter of intent, he backed out when the stock market fell in early 1970. Attempts to locate

another underwriter failed. Other than to open a bank account the corporation never did any business during the time it was controlled by all of the original stockholders.

2. On or about January 25, 1971, the stockholders and directors of Syncap met at the offices of Mr. Wallman. They resolved that the corporation should redeem the shares in question and they should be cancelled with the stated capital being reduced accordingly. However no minutes of said meeting were kept and no other action was taken.

3. The corporation issued checks on January 25, 1971, to William Landesman, Sidney Small and Bernard Silver. It issued other checks on February 19, 1971, to Seymour Cohen, Edward Palone and to Eugene Wallman. All checks were issued at the rate of 10 cents a share. One shareholder, Mr. Robert Runyon decided to keep his shares and as the sole shareholder used the corporate entity for other purposes. After February 19, 1971, the shareholders involved in this proceeding had no control over the corporation.

4. A determination of tax due (at one-and-one quarter cents a share) was issued to each of the following:

Syncap Enterprises, Inc. in the amount of \$4,975.00, later reduced by \$31.25 to \$4,943.75; Seymour Cohen in the amount of \$1,500.00; Sidney Small, in the amount of \$765.62; Bernard Silver

in the amount of \$631.25; Eugene Wallman in the amount of \$650.00; Edward Palone in the amount of \$765.63 and Henry Cohen in the amount of \$31.25. Henry Cohen has paid the tax determined against him.

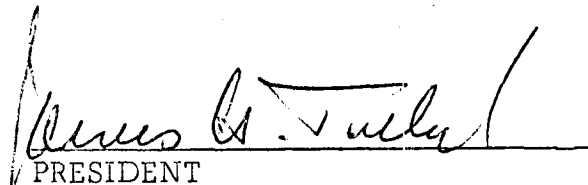
CONCLUSIONS OF LAW

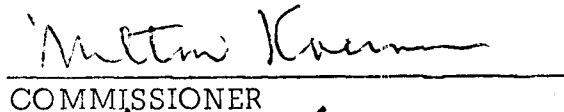
The shares in question were not within one year cancelled by an appropriate amendment to the corporation's certificate of incorporation or by action of the Board of Directors nor were they "on reacquisition" cancelled pursuant to the provisions for cancellation of shares by the board "at the time of reacquisition or at any time thereafter". (See Tax Law Section 270 Subdivision 1; Reg. 20 HYCRR 440.1(2)(3); Application of William H. Hernstadt, S.T.C. January 19, 1971.

The determination under review is correct and is due.

Dated: Albany, New York
February 10, 1976

STATE TAX COMMISSION

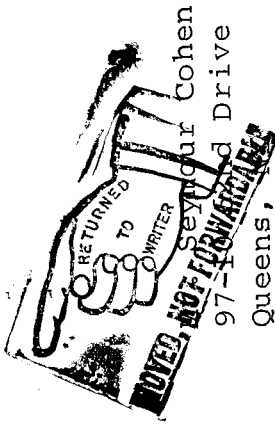

PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227



No better address available.

*Att.
Paul Greenburg
Bldg #9*

