

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARBOUR CORPORATION

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

John Huhn , 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 13 day of September , 1978, ~~she~~ served the within  
Notice of Decision by ~~(certified)~~ mail upon Arbour Corporation

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

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Arbour Corporation  
123 Larned Street  
Syracuse, NY

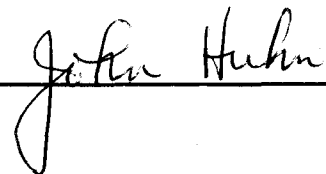
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

13 day of September , 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ARBOUR CORPORATION

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

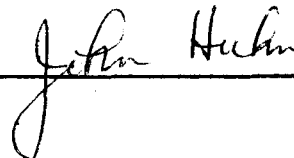
John Huhn , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 13 day of September , 1978 , she served the within  
Notice of Decision by ~~(certified)~~ mail upon Lombardi, Devorsetz,  
Stinziano & Smith  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Lombardi, Devorsetz, Stinziano & Smith  
Mony Plaza  
Syracuse, NY 13202  
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 Postal Service within the State of New York.

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

13 day of September , 1978.







STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

**September 13, 1978**

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**Arbour Corporation  
123 Larned Street  
Syracuse, NY**

**Gentlemen:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **279 (a)** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **90 days** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Michael Alexander**  
**Supervising Tax**  
**Hearing Officer**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
ARBOUR CORPORATION	:	DECISION
for a Hearing to Review a Determination	:	
Denying a Refund of Stock Transfer Tax	:	
under Article 12 of the Tax Law.	:	
	:	

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Applicant, Arbour Corporation, 123 Larned Street, Syracuse, New York, filed an application for a hearing to review a determination denying a refund of stock transfer tax paid under Article 12 of the Tax Law (File No. 11712).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 20, 1977 at 3:30 P.M. The applicant appeared by Lombardi, Devorsetz, Stinziano and Smith (Lynn H. Smith, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether a transfer of stock issued by a corporation in excess of the amount authorized in the corporate charter and subsequently recalled, is subject to tax under Article 12 of the Tax Law.

FINDINGS OF FACT

1. On November 28, 1975 as the result of an audit, the Miscellaneous Tax Bureau issued to applicant, Arbour Corporation, a Notice of Determination of Tax Due (Determination Tax No. 414), assessing additional tax due in the amount of \$2,645.00, plus a penalty of \$660.00.

2. At a regular meeting on October 22, 1971, applicant's Board of Directors proposed to issue 100 shares of capital stock of the corporation for each one share on record. Proposed shares were issued without obtaining the consent of the necessary shareholders, without filing the Certificate of Amendment of the Certificate of Incorporation of Arbour Corporation, and without paying the appropriate filing fee.

3. All stock of applicant, Arbour Corporation, issued in excess of the authorized amount has been recalled, and the status quo prior to its issuance re-established.

#### CONCLUSIONS OF LAW

A. That in the case of a change of shares, the shares resulting from such change shall upon the filing of the Certificate of Amendment be deemed substituted for the shares changed, in accordance with the stated terms of change; therefore, since such an amendment of the certificate by applicant, Arbour Corporation, was never filed with the Secretary of State, and since the filing fee was not paid to said Secretary, shares issued by Arbour Corporation could never be substituted in accordance with the meaning and intent of sections 805 and 807 of the Business Corporation Law.

B. That a corporation (which is limited by its charter as to the number of shares which it can issue) cannot issue valid shares in excess of the limit, and any attempt to do so is void (11 N.Y. Jur. Corporations §207). Where there is an over-issue, the increase and the certificates are void because of the fact that it is beyond the powers of the corporation to create and issue the additional stock (11 Fletcher Cyc. Corp. (Perm Ed) §5144).

C. That since the issue of stock in the instant case had been made in excess of the amount of stock which the corporation was authorized to issue, the transfers were void; therefore, no taxable transfer occurred.

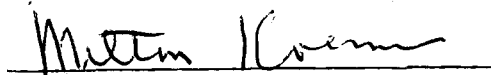
D. That the application of Arbour Corporation is granted and the Notice of Determination of Tax Due issued November 28, 1975 is cancelled.

DATED: Albany, New York

September 13, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER