

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
THE BANK OF NEW YORK

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)~~ :  
1975

State of New York  
County of Albany

Marsina Donnini, 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 30th day of June, 1977, she served the within  
Notice of Decision by ~~(certified)~~ mail upon The Bank of New York

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: The Bank of New York  
90 Washington St.  
Fifth Floor, New York

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)~~  
~~(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

30th day of June, 1977.

Marsina Donnini

Just Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THE BANK OF NEW YORK

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 (x) or Period (s) :  
1975

State of New York  
County of Albany

Marsina Donnini, 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 30th day of June, 19 77, she served the within  
Notice of Decision by ~~certified~~ mail upon Maurice M. Lynch, Esq. &  
Messrs. Olin, Murphy,  
Manuel & Lynch Esq. (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Maurice M. Lynch, Esq., of Counsel &  
as follows: Messrs. Olin, Murphy, Manuel & Lynch, Esqs.  
20 Broad Street  
New York, New York 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 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

30th day of June, 19 77

Marsina Donnini

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 30, 1977

TELEPHONE: (518) ~~457-1723~~

The Bank of New York  
90 Washington St.  
Fifth Floor, New York

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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

Enc.

cc: Petitioner's Representative:

**PAUL B. COBURN**  
Supervising Tax Hearing Officer

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
THE BANK OF NEW YORK	:	DECISION
for a Hearing to Review a Determination	:	
Denying a Refund of Stock Transfer Taxes	:	
under Article 12 of the Tax Law.	:	

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Applicant, The Bank of New York, P. O. Box 11003, New York, New York 10049, as transfer agent for Kewanee Oil Company, filed an application for a hearing to review a determination denying a refund of stock transfer taxes paid under Article 12 of the Tax Law. (File No. 11890)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on January 12, 1977 at 9:15 a.m. The applicant appeared by Olin, Murphy, Manuel & Lynch, Esqs. (Maurice M. Lynch, Esq. of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of counsel).

ISSUE

Whether the transfer of 312,498 shares of Millmaster Onyx Corporation common stock by Carter-Wallace, Inc. pursuant to a

purchase offer by Kewanee Oil Company, accompanied by twelve letters of transmittal each naming a soliciting dealer, constituted twelve taxable sales, or a single taxable sale, under Article 12 of the Tax Law.

FINDINGS OF FACT

1. Applicant, The Bank of New York (hereinafter Bank), was the named depository to which Carter-Wallace, Inc. sent its common stock of Millmaster Onyx Corporation for transmittal to the purchaser, Kewanee Oil Company.

2. On March 14, 1975, Kewanee Oil Company made a written Offer to Purchase all the outstanding stock of Millmaster Onyx Corporation. Kewanee Oil Company would pay any broker or dealer a soliciting dealer's fee of \$.40 per share if Kewanee Oil Company's letter of transmittal contained the broker's name in the appropriate space. Kewanee Oil Company stated that it would pay all stock transfer taxes.

3. On March 25, 1975, the board of directors of Carter-Wallace, Inc. adopted a resolution to accept the offer of Kewanee Oil Company.

4. On March 25, 1975, the board of directors of Carter-Wallace, Inc. sent to the applicant, Bank:

a) Twelve certified letters of transmittal, duly completed and executed by the president of Carter-Wallace, Inc. with certificates representing 312,498 shares of common stocks of Millmaster Onyx Corporation registered in the name of Carter-Wallace, Inc.

b) Twelve certified copies of the resolution of the board of directors of Carter-Wallace, Inc. authorizing the sale of Carter-Wallace, Inc.'s common stock of Millmaster Onyx Corporation pursuant to Kewanee Oil Company's Offer to Purchase.

c) Instructions to the Bank to notify Carter-Wallace, Inc. when they could pick up the check for the tendered shares.

5. Each letter of transmittal contained a statement naming a stock broker or securities dealer and the tendering stockholder represented therein that said dealer "... solicited and obtained this tender."

6. On April 18, 1975, the Bank paid stock transfer taxes of \$350.00 for each of twelve sales, totalling \$4,200.00.

7. On June 6, 1975, applicant, Bank, filed an application for refund of \$3,850.20, alleging that the Bank had erroneously paid the tax on twelve sales instead of one.

8. In a letter of determination dated September 2, 1975, the Miscellaneous Tax Bureau denied the application for refund in its entirety.

9. On September 25, 1975, applicant, Bank, requested a formal hearing on the denial of the application for refund.

10. The common stock of Millmaster Onyx Corporation registered in the name of Carter-Wallace, Inc. was transferred to Kewanee Oil Company pursuant to the Offer to Purchase of Kewanee Oil Company. Neither possession nor title was given to any intermediary.

11. On March 19, 1975, Carter-Wallace, Inc. requested applicant, Bank to re-issue Millmaster Onyx Corporation certificates in twelve blocks in the name of Carter-Wallace, Inc. so as to facilitate its dealing with "soliciting brokers".

12. Applicant, Bank, was in possession of all the facts regarding the offer to purchase, the tender, and the transfer of the stock of Millmaster Onyx Corporation to Kewanee Oil Company when it filed the stock transfer tax return and paid the tax of \$4,200.00 on April 18, 1975.

#### CONCLUSIONS OF LAW

A. That the applicant, The Bank of New York, has failed to prove that its payment of the stock transfer tax on twelve sales of the common stock of Millmaster Onyx Corporation in March of 1975 was erroneous within the meaning and intent of section 280 of the Tax Law.

B. That the conduct of Carter-Wallace, Inc. in having its stock re-issued in twelve blocks, and the execution and forwarding

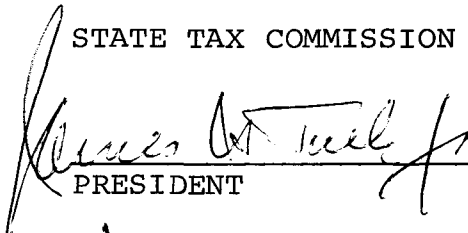
of twelve transmittal letters designating twelve brokers as "soliciting dealers" was consonant with the payment of the maximum stock transfer tax on twelve sales rather than on a single taxable sale, within the meaning and intent of section 270-a of the Tax Law.

C. That the United States Supreme Court has declared certain features of section 270(a) of the Tax Law to be unconstitutional and has remanded its determination to the New York Court of Appeals for further proceedings. Boston Stock Exchange v. State Tax Commission, 45 A.D. 2d 365, 357 N.Y.S. 2d 116, affirmed 37 N.Y. 2d 535, 375 N.Y.S. 2d 308, 337 N.E. 2d 758, reversed and remanded U.S. Supreme Court No. 75 - 1019, January 12, 1977 (CCH 5 N.Y. Tax Cases 99-990).

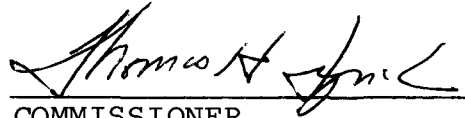
D. That the determination of September 2, 1975 by the Miscellaneous Tax Bureau denying the application of The Bank of New York for refund of stock transfer taxes is sustained.

DATED: Albany, New York  
June 30, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER