

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DELTA RESOURCES, INC.

AFFIDAVIT OF MAILING

Hearing to Review a Determination
For a ~~Redetermination of a Determination~~
Of Tax Due or a Determination Denying
~~ax Refund of a Determination Denying~~
of 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

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 22nd day of July, 1977, she served the within
Notice of Decision by ~~(certified)~~ mail upon Delta Resources, Inc.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Delta Resources, Inc.
1133 Avenue of the Americas
New York, New York 10036

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)~~
~~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

22nd day of July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DELTA RESOURCES, INC.

Hearing to Review a Determination

For a Refund of Tax Due of a Determination Denying

of a Refund of Stock Transfer

Taxes under Article (x) 12 of the

Tax Law for the Year(s) or Period(s)

AFFIDAVIT OF MAILING

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 22nd day of July, 1977, she served the within Notice of Decision by ~~(certified)~~ mail upon John Steel

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Steel, Esq.
Steel & Cohn
747 Fifth Avenue
New York, New York 10022

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

22nd day of July, 1977.

Marsina Donnini

Janet Mack



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

July 22, 1977

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

Delta Resources, Inc.
1133 Avenue of the Americas
New York, New York 10036

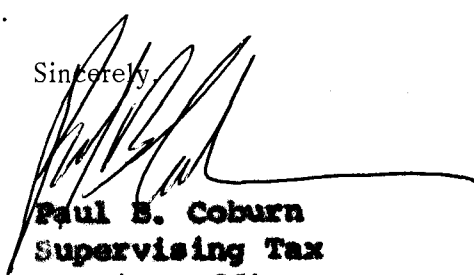
Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **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,


Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
DELTA RESOURCES, INC.	:	DECISION
for a Hearing to Review a Determination	:	
of Tax Due or a Determination Denying	:	
a Refund of Stock Transfer Tax under	:	
Article 12 of the Tax Law.	:	

Petitioner, Delta Resources, Inc., 1133 Avenue of the Americas, New York, New York 10036, (hereinafter Delta) filed an application for a hearing to review a determination of tax due or a determination denying a refund of stock transfer tax under Article 12 of the Tax Law. (File No. 00546).

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 October 28, 1976 at 2:45 P.M. The applicant appeared by Steel & Cohn, Esqs. (John Steel, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the transfer of previously unissued capital stock from a nominee to various employee transferees of the stock issuing corporation was taxable under Article 12 of the Tax Law.

II. Whether such transfer was a sale subject to a stock transfer rate of 1.25 cents a share or 2.50 cents a share.

FINDINGS OF FACT

1. On January 7, 1975, the Stock Transfer Section of the Miscellaneous Tax Bureau advised the applicant, Delta, that an audit of applicant's corporation stock transfer books, records and memoranda had disclosed that from its inception on November 19, 1971 to December 9, 1974, the applicant, Delta, had incurred a stock transfer tax liability of \$1,818.75. A copy of the audit report was sent to applicant, together with a demand for payment of the tax found to be due.
2. On January 10, 1975, applicant, Delta, paid stock transfer taxes of \$1,818.75.
3. On January 29, 1975, applicant, Delta, filed an application for refund of the stock transfer tax it had paid. Applicant claimed that the transfer of stock issued to nominee was exempt from stock transfer taxes as a transfer to a nominee for deposit as collateral security, and thus exempt under section 270.5(b)(sic) of the Tax Law.
4. On March 14, 1975, the Miscellaneous Tax Bureau denied the refund application in its entirety.
5. On April 2, 1975, applicant, Delta, made application for a formal hearing for redetermination of the denial of its refund application.

6. Applicant, Delta Resources, Inc., is a New York corporation authorized to issue 2,000,000 shares of capital stock with a par value of \$.02. It began business in November of 1971.

7. In January, 1972, the Board of Directors of applicant, Delta, adopted an "Employee Qualified Stock Option Incentive Plan I," pursuant to which not more than 464,000 shares of unissued or reacquired stock were to be sold at par to employees who qualified under the said plan. Each employee-optionee agreed to remain in the employ of applicant, Delta, for at least two years before he could receive stock according to his option. Applicant, Delta, vested the rights to designated shares of stock in the optionee, but registered the stock in the name of its nominee, a firm of attorneys.

8. In February, 1974, twelve of applicant's employees exercised their options and purchased at a price of \$1.00 per share a total of 72,750 shares of applicant's capital stock from the nominee, paying a stock transfer tax of \$.02 per share.

9. No stock transfer tax was paid by applicant, Delta, either when the stock certificates were issued to its nominee or when the applicant issued new certificates in the names of the employee-optionees.

10. The Miscellaneous Tax Bureau denominated the transfers to the employees as "no sales," and assessed the maximum transfer tax at \$.025 per share.

11. Admittedly, after the transfer and delivery of stock certificates by nominee to the employees, and after the assessment by the Miscellaneous Tax Bureau of stock transfer tax due, applicant, Delta, issued an undated certificate stating that the shares transferred from its nominee to the optionees had been standing as collateral security in the name of the nominee.

CONCLUSIONS OF LAW

A. That the issue to its nominee of previously unissued capital stock by the applicant, Delta Resources, Inc., constituted an original issue, and as such was not subject to stock transfer tax under section 270 of Article 12 of the Tax Law.

B. That where there is an agreement evidencing the deposit of stock certificates as collateral security, the transfer of stock to that holder's nominee would not be taxable"... provided the transaction in each case is accompanied by a certificate setting forth the facts or such other certificate or record as the commission may require." Section 270, Subd. 5 of the Tax Law (underlining supplied); 20 NYCRR 444.2. Whether or not the certificates of stock transferred by applicant's nominee to the several employees had been held as collateral security, the transfer by the applicant's nominee failed to meet the requirements of the statute to exempt collateral security from stock transfer tax. Exemption from the tax must find express statutory sanction.

Compliance with the letter of the law as well as its spirit is required. The statute requires the claim for exemption to be made at the moment of transfer. A belated certificate that the transfer is of collateral security fails to meet the requirements of the Tax Law. Craig v. Bates (1954) 44 Misc. 2d 432, 254 N.Y.S. 2d 244; CCH N.Y. Tax Reporter 57-207.04.

C. That there is imposed a stock transfer tax on all sales and all deliveries or transfers of shares or certificates of stocks according to section 270, Subd. 1 of the Tax Law. The transfer from the nominee to the employee-optionees was by sale and, therefore, subject to stock transfer tax.

D. That since the sale price of 72,750 shares of applicant's stock sold to its employees in February of 1974, was less than \$5.00 per share, said shares were taxable at \$0.125 per share for a total due of \$909.38, according to section 270, Subd. 2 of the Tax Law.


E. That the application for refund of the \$1,818.75 stock transfer tax paid by applicant, Delta Resources, Inc., is granted to the extent of \$909.37, and the denial of the refund application is cancelled to that extent. The application for refund is otherwise denied.

DATED: Albany, New York
July 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER