

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY SARA 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

Bruce Batchelor, 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 25th day of January, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Harry Sara Corporation

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harry Sara Corporation
570 Seventh Ave.
New York, N.Y. 10018

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

25th day of January, 1977

Bruce Batchelor

Janet Track

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY SARA 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 (22) 12 of the :
Tax Law ~~for the Year(s) or Period(s)~~ :

State of New York
County of Albany

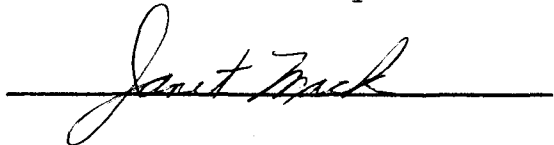
Bruce Batchelor , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of January , 19 77, he served the within
Notice of Determination by ~~(certified)~~ mail upon Robert G. Pierce, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert G. Pierce, Esq.
Hardy, Peal, Rawlings, Werner & Coogan
750 Third Ave.
New York, N.Y. 10017
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

25th day of January , 1977.







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

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

January 25, 1977

Harry Sara Corporation
570 Seventh Ave.
New York, N.Y. 10018

Gentlemen:

Please take notice of the **DETERMINATION**
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.

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,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
HARRY SARA CORPORATION	:	DETERMINATION
for a Hearing to Review a Determination of	:	
a Stock Transfer Tax Due and a Denial of a	:	
Portion of a Refund of Stock Transfer Tax	:	
Paid under Article 12 of the Tax Law.	:	

Harry Sara Corporation of 570 Seventh Avenue, New York, New York 10018, filed an application for a hearing to review a determination of a stock transfer tax due and a determination denying a portion of a refund of stock transfer taxes paid under Article 12 of the Tax Law. (File No. 00651).

A formal hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Solomon Sies, Hearing Officer, on October 21, 1976 at 11:15 A.M.

The applicant appeared by Hardy, Peal, Rawlings, Werner & Coogan (Robert G. Pierce, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Arthur Rosen, Esq., of counsel).

ISSUES

I. Whether or not the reacquisition by the applicant of 30,000 shares of its own stock constituted "treasury" shares.

II. Whether or not the applicant reacquired the shares of stock in issue for cancellation, pursuant to the provisions of section 515 of the Business Corporation Law, so as to constitute a nontaxable transfer in accordance with section 270(1) of the Tax Law.

III. Whether or not the applicant is entitled to benefit from the nonresident rate of tax where it failed to file a certificate of nonresidency at the time of the transaction.

FINDINGS OF FACT

1. Harry Sara Corporation is a domestic corporation organized under the laws of the State of New York, and maintains its principal place of business within the State of New York.

2. Prior to January 1, 1970, there were 60,000 outstanding shares of stock of Harry Sara Corporation, 30,000 owned by Harry A. Stern and 30,000 owned by his wife, Sara B. Stern.

3. Sara B. Stern died on February 17, 1970. Her 30,000 shares of stock were distributed to named legatees pursuant to the terms of her will.

3. Harry Sara Corporation reacquired all of the 30,000 shares of stock from the heirs of Sara B. Stern during the period August 2, 1972 through February 1973. It is alleged by the applicant that said shares were reacquired out of stated capital and should have been considered cancelled upon reacquisition, and that at the time of reacquisition such shares were marked "cancelled."

4. On August 8, 1974, the Stock Transfer Tax Section of the Miscellaneous Tax Bureau determined that the reacquisition of the shares of stock in issue was subject to stock transfer tax since said shares represented "treasury shares." It was further determined that the tax should be at the rate of two and one-half cents per share. The total stock transfer tax assessed against the applicant was \$1,547.50.

5. On or about August 13, 1974, the applicant paid the stock transfer tax and on June 23, 1975, it filed an application for refund in the amount of \$502.21. It is claimed that, since the cost of reacquiring the 30,000 shares of stock exceeded the capital surplus to the extent of \$144,448.92, or the equivalent of 14,445 shares at \$10.00 par value each, these shares should be considered retired in accordance with the provisions of Section 515 of the Business Corporation Law. This would amount to a claimed refund of \$361.13.

6. It is further claimed that the sale of the shares of stock in issue was made by nonresidents, and that the reduced rate of tax should have been computed pursuant to section 270-a(4)(c) of the Tax Law. A certificate of nonresidency was not submitted at the time of the transaction. The applicant claims a refund with respect to this portion of stock transfer tax in the amount of \$141.08, whereas the correct amount, if allowed, should be \$136.11.

7. The balance sheets of Harry Sara Corporation as of December 31, 1972 and December 31, 1973, which were prepared on September 19, 1974, and the corporation's balance sheet as of June 30, 1974, prepared September 22, 1974, show the shares in issue to be "treasury shares." No dividend statement was issued by the applicant corporation.

8. No resolution by the board of directors was recorded in the minutes of the subject corporation with respect to the reacquisition of the shares in issue.

9. No amendment to the corporation's certificate of incorporation cancelling such shares was made within one year from the date of purchase.

10. Section 102(14) of the Business Corporation Law defines "treasury shares" as "shares which have been issued, have been subsequently acquired, and are retained uncanceled by the corporation. Treasury shares are issued shares, but not outstanding shares, and are not assets."

CONCLUSIONS OF LAW

A. That the reacquisition of the 30,000 shares of stock in issue by the applicant, Harry Sara Corporation, was subject to stock transfer tax pursuant to section 270(1) of the Tax Law, since they were "treasury shares."

B. That the aforementioned shares were not cancelled in accordance with the provisions of section 515 of the Business Corporation Law.

C. That since there was no compliance with the provisions of subdivision (c), subparagraph (1) of section 270-a of the Tax Law at the time of reacquisition, the reduced rates for nonresidents does not apply. (See Craig v. Bates, 44 Misc. 2d 432, 254 NYS 2d 244.)

D. That the determination of stock transfer tax due is correct and the application for refund of stock transfer tax by Harry Sara Corporation be and the same is hereby denied.

DATED: Albany, New York
January 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER