

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN LAMULA INVESTORS, INC.

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 ~~XXXXXXX~~ Period (s) :
Period October 16, 1970 through April 20, 1978

State of New York
County of Albany

John Huhn

, 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 13th day of September, 1978, he served the within

Notice of Decision by ~~certified~~ mail upon John Lamula

(representative of) the petitioner in the within proceeding,

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


as follows: John Lamula
John Lamula Investors, Inc.
116 John Street
New York, New York 10036

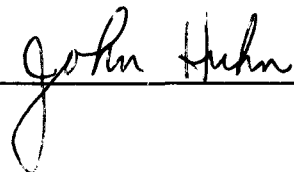
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of September, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN LAMULA INVESTORS, INC.

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) XXX~~ Period (x)
Period October 16, 1970 through April 20, 1973.

State of New York
County of Albany

John Huhn

, being duly sworn, deposes and says that

~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
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Notice of Decision by ~~(certified)~~ mail upon John Lamula Investors, Inc.

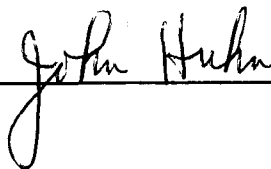

~~(XXXXXXXXXXXX)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John Lamula Investors, Inc.
116 John Street
New York, New York 10036

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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

13th day of September, 1978





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

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

September 13, 1978

John Lamula Investors, Inc.
116 John Street
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 **(X) 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

In the Matter of the Application :
of :
JOHN LAMULA INVESTORS, 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 for the Period October 16, 1970 :
through April 20, 1973. :

Applicant, John Lamula Investors, Inc., 116 John Street,
New York, New York 10036, 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 for
the period October 16, 1970 through April 20, 1973 (File No. 01201).

A formal hearing was held before Michael Alexander, Hearing
Officer, at the offices of the State Tax Commission, Two World
Trade Center, New York, New York, on January 20, 1977 at 1:35 P.M.
Applicant appeared by its president, John Lamula. The Miscellaneous
Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq., of
counsel).

ISSUE

Whether applicant, John Lamula Investors, Inc., a broker/
dealer, is liable for stock transfer taxes on transactions where
it participated as a selected dealer in selling groups, whereby it
received stock certificates in the street names of the under-
writers, which certificates were then transferred to customers of
applicant.

FINDINGS OF FACT

1. On October 19, 1973, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due to applicant and determined therein a stock transfer tax of \$776.93.

2. The parties agree, pursuant to an Opinion of Counsel for the Department of Taxation and Finance dated September 7, 1976, that the amount of tax at issue is revised to total \$573.18, which revision resulted from eliminating tax asserted on transactions prior to January 2, 1972.

3. Applicant, John Lamula Investors, Inc., is a broker/dealer in securities. During the period in question, applicant on occasion participated as a selected dealer. As such, applicant was a member of the selling group in an underwriting of a security and received a commission from the underwriters for placing the security with customers.

4. An underwriting group, with one underwriter acting as managing or principal underwriter, would enter into an agreement with a corporation to market shares of stock in the corporation. The certificates for the shares of stock would then be transferred to the underwriting group, usually by transferring the shares to the name of the managing underwriter.

5. Selected dealers (such as applicant) sign a selected dealer agreement with the underwriting group and request a number of shares of stock which the selected dealer believes his customers will purchase.

6. Upon receipt of the number of shares from the underwriters in "street name", applicant would enter on its books the shares received (under "Purchases" from the underwriter for the account of "Selling Group") and the customers to whom the shares were to be transferred (under "Sales", "to deliver"). Payment to the underwriter would be made. In some instances, payment would be made prior to receipt of payment for the securities from the customers and, on occasion, applicant would not receive its commissions (which are paid by the underwriting group) until considerably later. Applicant would send a "confirmation" to its customers as a broker buying pursuant to the customers' instructions and would telegram the underwriters and advise that all shares had been sold. The confirmation would show price plus commission; however, the commission was, in reality, a part of the offering price, and was not a commission paid by the customer to applicant.

7. Applicant would then have the corporation transfer the shares from the "street name" of the underwriter to the name of the purchasing customers on its books. Applicant never held any securities in "street name" for its customers on the purchases in question.

8. The underwriting group paid stock transfer taxes on all certificates sent to applicant.

9. Applicant (in compliance with Article III, section 1 of the National Association of Security Dealers, Inc., Rules of Fair Practice) never held shares sent from the underwriters for its own account, charged only the original offering price and would return any shares it was unable to sell.

10. The "Selected Dealer Agreement" (which applicant signed as a member of the selling group) contained standard language which had not been changed for approximately 25 years; this agreement was signed in every instance. The Agreement provided in pertinent part:

"1. Offering to Selected Dealers. The several Underwriters, acting through us, are severally offering part of the Securities for sale to certain dealers ("Selected Dealers"), as principals, at the public offering price less a concession. . . Sales of Securities to you pursuant to such offering will be evinced by our written confirmation. . . .

2. Reoffering by Selected Dealers. Securities purchased by you may be reoffered in conformity with the terms of offering set forth in the Prospectus. . . .

It is assumed that Securities sold by you will be effectively placed for investment. If we contract for or purchase in the open market or otherwise for the account of any Underwriter any Securities sold to you and not effectively placed for investment, we may charge you the Selected Dealer's concession originally allowed you on the Securities so repurchased, and you agree to pay such amount to us on demand. Securities so delivered need not be the identical Securities originally purchased by you.

You will advise us upon request of Securities purchased by you remaining unsold, and we shall have the right to repurchase such unsold Securities on demand at the public offering price less all or part of the Selected Dealer's concession.

3. Payment and Delivery. Payment for Securities purchased by you shall be made by you on such dates and at such places as we advise you, by certified or bank cashier's check payable to the order of Faulkner, Dawkins & Sullivan Securities Inc. [the underwriter's representative] in such clearing house funds as we advise, against delivery of such Securities. Delivery instructions must be in our hands at the office of Faulkner, Dawkins & Sullivan Securities, Inc., One New York Plaza, New York, New York 10004, at such time as we request. . . and that you will conform to the Rules of Fair Practice of said Association /National Association of Security Dealers, Inc./ . . .

6. Termination. This Agreement shall terminate 20 days after the date hereof unless extended by us for a period or periods not exceeding an additional 20 days in the aggregate, and, whether extended or not, may be terminated by us at any time. Such termination shall not affect your obligation to pay for any Securities purchased by you or any of the provisions of Section 4 hereof."

CONCLUSIONS OF LAW

A. That section 270 of the Tax Law imposes a tax on all sales, agreements to sell or memoranda of sales, and all deliveries or transfers of shares or certificates of stock, whether investing the holder with the beneficial interest in or legal title to said stock or merely with the possession or use thereof for any purpose, or to secure the future transfer of any such stock or certificates.

B. That the Selected Dealers Agreement constitutes an agreement to sell shares or certificates by the underwriting group to the applicant and that the stock transfer tax was due and properly paid by the underwriting group.

C. That pursuant to the Agreement and in fact, applicant was a principal subject to certain restrictions contained in the Prospectus and the Agreement, and that applicant received its commissions from the underwriters and not from customers who purchased the shares or certificates from applicant.

D. That applicant did not represent specific clients for whom it was executing orders in the acquisition of its allotment as a selected dealer and, therefore, applicant did not act as a broker under section 270 since it received no commission from a

client to attend to the purchase of stock for and on account of that client (1930 Op. Atty Gen. 374; 1944 Op. Atty. Gen. 353).

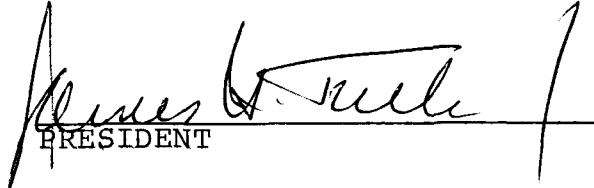
E. That the transaction wherein applicant sold shares to its customers was a sale by applicant as a principal and as such is not afforded any exemption from stock transfer tax by Article 12 of the Tax Law and that, consequently, such sale is taxable.

F. That the application of John Lamula Investors, Inc. is denied and the Notice of Determination of Tax Due dated October 19, 1973, as modified (see Finding of Fact "2", above), is sustained.

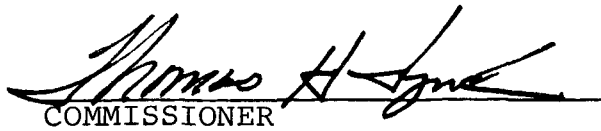
DATED: Albany, New York

STATE TAX COMMISSION

September 13, 1978


PRESIDENT


COMMISSIONER


COMMISSIONER