

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PETER MAX, PETER MAX ENTERPRISES, INC.,
BERNARD TANNENBAUM and MARTIN SASS
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 ~~xxxxxx~~ Period (x)
February 4, 1971 through November 8, 1971.

AFFIDAVIT OF MAILING

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 1st day of September , 1978, ~~he~~ served the within
Notice of Decision by ~~(certified)~~ mail upon Peter Max
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Peter Max
325 East 75th Street
New York, 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~~ 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

1st day of September , 1978.

Walker

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PETER MAX, PETER MAX ENTERPRISES, INC.,
BERNARD TANNENBAUM and MARTIN SASS
For a Redetermination of a Deficiency or :
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Tax Law for the ~~XXXXXX~~ Period (x)
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AFFIDAVIT OF MAILING

State of New York
County of Albany

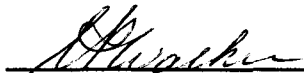
John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of September, 1978, ~~she~~ served the within
Notice of Decision by ~~(certified)~~ mail upon Peter Max
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by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Peter Max Enterprises, Inc.
325 East 75th Street
New York, New York

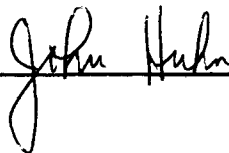
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(post office or official depository) under the exclusive care and custody of
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That deponent further says that the said addressee is the ~~(representative~~
~~of the)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

1st day of September , 19 78





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

PETER MAX, ^{of} PETER MAX ENTERPRISES, INC.,
BERNARD TANNENBAUM and MARTIN SASS

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)~~ Period ~~(x)~~ :
February 4, 1971 through November 8, 1971.

State of New York
County of Albany

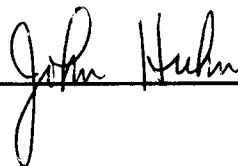
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of September , 1978, ~~he~~ served the within
Notice of Decision by ~~(certified)~~ mail upon Martin Sass
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Martin Sass
c/o M. D. Sass & Co., Inc.
1 State Street Plaza
New York, New York 10004
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

1st day of September , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PETER MAX, PETER MAX ENTERPRISES, INC.,
BERNARD TANNENBAUM and MARTIN SASS
For a Redetermination of a Deficiency or :
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of Stock Transfer :
Taxes under Article ~~(s)~~ 12 of the
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
February 4, 1971 through November 8, 1971.

AFFIDAVIT OF MAILING

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 1st day of September , 1978, he served the within
Notice of Decision by ~~(certified)~~ mail upon Bert Padell
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bert Padell, Esq.
Padell Kaden Nadell & Co.
405 Park 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

1st day of September , 1978.

[Signature]

John Huhn



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 1, 1978

**Mr. Peter Max
325 East 75th Street
New York, New York**

Dear Mr. Max:

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 **(a) 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
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

September 1, 1978

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

Peter Max Enterprises, Inc.
325 East 75th Street
New York, New York

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 ~~(b)~~ **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
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

September 1, 1978

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

**Mr. Martin Sass
c/o M. D. Sass & Co., Inc.
1 State Street Plaza
New York, New York 10004**

Dear Mr. Sass:

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 ~~(b)~~ **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: ~~TAXPAYER'S REPRESENTATIVE~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications :
of :
PETER MAX, PETER MAX ENTERPRISES, INC., :
BERNARD TANNENBAUM and MARTIN SASS : 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 February 4, 1971 :
through November 8, 1971. :
:

Applicants, Peter Max, 325 E. 75th Street, New York, New York, Peter Max Enterprises, Inc., of the same address, Bernard Tannenbaum, 32 East 57th Street, New York, New York 10022 and Martin Sass, c/o M. D. Sass & Co., Inc., 1 State Street Plaza, New York, New York 10004, filed applications 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 February 4, 1971 to November 8, 1971 (File No. 00331).

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 17, 1977 at 1:15 P.M. Applicants Peter Max and Peter Max Enterprises, Inc. were represented by Padell, Kaden, Nadel & Co. (Bert Padell, Esq., of counsel). Applicant Martin Sass appeared pro se. Applicant Bernard Tannenbaum defaulted. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq., of counsel).

ISSUE

Whether the transactions here in issue constitute transfers subject to the tax imposed by Article 12 of the Tax Law and, if taxable transfers, how many shares were transferred.

FINDINGS OF FACT

1. Peter Max Enterprises, Inc. was incorporated in New York on September 20, 1966 and was authorized to issue 200 shares of no par value stock.

2. On March 25, 1970, a Restated Certificate of the Certificate of Incorporation of Peter Max Enterprises, Inc., subscribed to February 12, 1970 under section 807 of the Certificate Corporation Law, was filed with the Department of State. Therein, the Certificate of Incorporation was amended and provided in part:

"To increase the authorized capital stock of the Corporation from two hundred (200) shares, without par value, as presently authorized, to three million (3,000,000) shares, having a par value of ten (\$.10) cents each."

and

"The number of shares of the Corporation previously authorized to be issued, and issued, is 200 shares, having no par value. The 200 shares issued shall be changed to 1,530,000 shares of the new ten (\$.10) cents par value stock, for each no par value share previously issued."

3. The tax on changes of capital imposed by section 180 of the Tax Law was paid at the time the amended certificate was filed, based on the increase in the number of shares authorized and on the change from no par value to par value.

4. On November 19, 1971, a Certificate of Amendment of the Certificate of Incorporation of Peter Max Enterprises, Inc. was filed with the Department of State. Said amendment reduced the stated

capital of the corporation by reducing the par value of all issued common shares from \$.10 to \$.01 and by decreasing the issued common shares from 1,530,000 to 480,000 common shares. The stated capital was thus reduced from \$153,000.00 to \$4,800.00. Shareholders of the common stock would have 1 share of the new stock for each 3.1875 of \$.10 par value stock previously issued.

5. The transfer books of Peter Max Enterprises, Inc. chronicle the following transfers:

a. On March 4, 1971, old certificate No. 1 for 200 shares to Peter Max was replaced by new certificates Nos. 2 and 3 to Peter Max for 198 shares and to Neuwirth Associates for 2 shares.

b. On September 9, 1971, certificate No. 2 for 198 shares to Peter Max was transferred and two new certificates were issued, certificate No. 4 for 188 shares to Peter Max and certificate No. 5 for 10 shares to Martin Sass.

c. On November 8, 1971, certificate No. 4 for 188 shares to Peter Max was transferred and two new certificates were issued, certificate No. 6 for 178 shares to Peter Max and certificate No. 7 for 10 shares to Bernard Tannenbaum.

6. Applicants Peter Max and Peter Max Enterprises, Inc. signed a 21-page letter agreement dated February 24, 1971 which was also signed by applicant Martin Sass. Said agreement was for loans to Peter Max Enterprises, Inc. for the purpose of paying trade creditors and other business expenses. The agreement provided, in part, for an anticipated public offering of stock, a financing arrangement for \$250,000.00, a 1% common stock equity interest to be issued to Neuwirth

Associates, a designation of Martin Sass or his designee as a director of the Company and further agreement to vote his shares in the Company for his election as director. This agreement also stated that:

"The Company has filed an amendment to its certificate of incorporation increasing its authorized capital stock to 3,000,000 shares of common stock, par value \$.10 per share and the 200 presently outstanding shares are to be exchanged for 1,530,000 shares of such newly authorized stock."

7. On December 12, 1972, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due to Peter Max Enterprises, Inc. and Martin Sass. On June 20, 1973, it issued such a Notice to Peter Max, determining tax due in the following amounts: Peter Max \$1,691.25, Peter Max Enterprises, Inc. \$1,691.25 and Martin Sass \$750.00. In each instance the tax was computed by multiplying the number of shares listed as transferred on the books of the corporation by 7,650 to arrive at the number of shares transferred, predicated on the amended certificate described in Finding of Fact "2", above.

CONCLUSIONS OF LAW

A. That section 270 of the Tax Law provides that a tax is imposed on all deliveries or transfers of shares or certificates of stock whether made upon or shown on the books of the corporation whether intermediate or final, whether investing the holder with the beneficial interest in or legal title to said stock or merely with the possession or use thereof.

B. That the transactions which occurred on March 4, 1971, September 9, 1971 and November 8, 1971 constitute transfers where an interest was transferred from one party to another and are subject to the tax imposed by section 270.

C. That section 270 further provides in subdivision 3 thereof that: "It shall be the duty of the person or persons making or effectuating the sale or transfer, including the person or persons to whom the sale or transfer is made, to pay the tax provided by this article."

D. That 20 NYCRR 440.3(a) provides, after paraphrasing §270 subdivision 3, "Thus, both transferor and transferee are liable, and if a transfer is made on the books of the corporation, it is also liable."

E. That the three transfers here in issue all occurred after the amendment of the certificate on March 25, 1970 (and before the further amendment of the certificate which occurred on November 19, 1971) and that, consequently, each entry on the books regarding transfers of 2 shares, 10 shares and 10 shares refers to that number of shares multiplied by 7,650 to arrive at the correct amount of shares transferred.

F. That the applications of Peter Max, Peter Max Enterprises, Inc. and Martin Sass are denied and the notices of determination of tax due issued to Peter Max on June 20, 1973 and to Peter Max Enterprises, Inc. and Martin Sass on December 12, 1972 are sustained.


DATED: Albany, New York

September 1, 1978

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO . . . Ms. Davis

Please attach to original decision.

No better addresses.

9/18/78

Michael Alexander

CONSUMER ELECTRONICS[®] MONTHLY

325 East 75th Street, New York, N.Y. 10021 (212) 794-0500

TO FORMER HEARINGS:

PETER MAX IS NO LONGER AT
325 E. 75 ST. CONSUMER ELECTRONICS
MOVED HERE IN 1976. WE HAVE
NO KNOWLEDGE WHERE PETER MAX
HAS MOVED TO, HOWEVER HE
HAS NOT NOTIFIED THE POST OFFICE
AS WE CONTINUALLY RECEIVED HIS
MAIL. SO WE ARE RETURNING
THIS TAX HEARING INFORMATION.

**CONSUMER
ELECTRONICS
MONTHLY**

325 East 75th Street, New York, N.Y. 10021



FORMAIL HEARINGS DEPT.
STATE OF NEW YORK
DEPT. OF TAXATION & FINANCE
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227



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 1, 1978

Peter Max Enterprises, Inc.
325 East 75th Street
New York, New York

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 Applications :
of :
PETER MAX, PETER MAX ENTERPRISES, INC., :
BERNARD TANNENBAUM and MARTIN SASS : 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 February 4, 1971 :
through November 8, 1971. :

Applicants, Peter Max, 325 E. 75th Street, New York, New York,
Peter Max Enterprises, Inc., of the same address, Bernard Tannenbaum,
32 East 57th Street, New York, New York 10022 and Martin Sass, c/o
M. D. Sass & Co., Inc., 1 State Street Plaza, New York, New York
10004, filed applications 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 February 4, 1971 to
November 8, 1971 (File No. 00331).

A formal hearing was held before Michael Alexander, Hearing
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Center, New York, New York, on January 17, 1977 at 1:15 P.M. Appli-
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Scott, Esq., of counsel).

ISSUE

Whether the transactions here in issue constitute transfers subject to the tax imposed by Article 12 of the Tax Law and, if taxable transfers, how many shares were transferred.

FINDINGS OF FACT

1. Peter Max Enterprises, Inc. was incorporated in New York on September 20, 1966 and was authorized to issue 200 shares of no par value stock.

2. On March 25, 1970, a Restated Certificate of the Certificate of Incorporation of Peter Max Enterprises, Inc., subscribed to February 12, 1970 under section 807 of the Certificate Corporation Law, was filed with the Department of State. Therein, the Certificate of Incorporation was amended and provided in part:

"To increase the authorized capital stock of the Corporation from two hundred (200) shares, without par value, as presently authorized, to three million (3,000,000) shares, having a par value of ten (\$.10) cents each."

and

"The number of shares of the Corporation previously authorized to be issued, and issued, is 200 shares, having no par value. The 200 shares issued shall be changed to 1,530,000 shares of the new ten (\$.10) cents par value stock, for each no par value share previously issued."

3. The tax on changes of capital imposed by section 180 of the Tax Law was paid at the time the amended certificate was filed, based on the increase in the number of shares authorized and on the change from no par value to par value.

4. On November 19, 1971, a Certificate of Amendment of the Certificate of Incorporation of Peter Max Enterprises, Inc. was filed with the Department of State. Said amendment reduced the stated

capital of the corporation by reducing the par value of all issued common shares from \$.10 to \$.01 and by decreasing the issued common shares from 1,530,000 to 480,000 common shares. The stated capital was thus reduced from \$153,000.00 to \$4,800.00. Shareholders of the common stock would have 1 share of the new stock for each 3.1875 of \$.10 par value stock previously issued.

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6. Applicants Peter Max and Peter Max Enterprises, Inc. signed a 21-page letter agreement dated February 24, 1971 which was also signed by applicant Martin Sass. Said agreement was for loans to Peter Max Enterprises, Inc. for the purpose of paying trade creditors and other business expenses. The agreement provided, in part, for an anticipated public offering of stock, a financing arrangement for \$250,000.00, a 1% common stock equity interest to be issued to Neuwirth

Associates, a designation of Martin Sass or his designee as a director of the Company and further agreement to vote his shares in the Company for his election as director. This agreement also stated that:

"The Company has filed an amendment to its certificate of incorporation increasing its authorized capital stock to 3,000,000 shares of common stock, par value \$.10 per share and the 200 presently outstanding shares are to be exchanged for 1,530,000 shares of such newly authorized stock."

7. On December 12, 1972, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due to Peter Max Enterprises, Inc. and Martin Sass. On June 20, 1973, it issued such a Notice to Peter Max, determining tax due in the following amounts: Peter Max \$1,691.25, Peter Max Enterprises, Inc. \$1,691.25 and Martin Sass \$750.00. In each instance the tax was computed by multiplying the number of shares listed as transferred on the books of the corporation by 7,650 to arrive at the number of shares transferred, predicated on the amended certificate described in Finding of Fact "2", above.

CONCLUSIONS OF LAW

A. That section 270 of the Tax Law provides that a tax is imposed on all deliveries or transfers of shares or certificates of stock whether made upon or shown on the books of the corporation whether intermediate or final, whether investing the holder with the beneficial interest in or legal title to said stock or merely with the possession or use thereof.

B. That the transactions which occurred on March 4, 1971, September 9, 1971 and November 8, 1971 constitute transfers where an interest was transferred from one party to another and are subject to the tax imposed by section 270.

C. That section 270 further provides in subdivision 3 thereof that: "It shall be the duty of the person or persons making or effectuating the sale or transfer, including the person or persons to whom the sale or transfer is made, to pay the tax provided by this article."

D. That 20 NYCRR 440.3(a) provides, after paraphrasing §270 subdivision 3, "Thus, both transferor and transferee are liable, and if a transfer is made on the books of the corporation, it is also liable."

E. That the three transfers here in issue all occurred after the amendment of the certificate on March 25, 1970 (and before the further amendment of the certificate which occurred on November 19, 1971) and that, consequently, each entry on the books regarding transfers of 2 shares, 10 shares and 10 shares refers to that number of shares multiplied by 7,650 to arrive at the correct amount of shares transferred.

F. That the applications of Peter Max, Peter Max Enterprises, Inc. and Martin Sass are denied and the notices of determination of tax due issued to Peter Max on June 20, 1973 and to Peter Max Enterprises, Inc. and Martin Sass on December 12, 1972 are sustained.

DATED: Albany, New York

September 1, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25 **NORMAL HEARING**

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Peter Max Enterprises, Inc.
325 East 75th Street
New York, New York





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

September 1, 1978

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

Mr. Peter Max
325 East 75th Street
New York, New York

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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 Applications :

of :

PETER MAX, PETER MAX ENTERPRISES, INC., :
BERNARD TANNENBAUM and MARTIN SASS :

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 :
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Applicants, Peter Max, 325 E. 75th Street, New York, New York,
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ISSUE

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FINDINGS OF FACT

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2. On March 25, 1970, a Restated Certificate of the Certificate of Incorporation of Peter Max Enterprises, Inc., subscribed to February 12, 1970 under section 807 of the Certificate Corporation Law, was filed with the Department of State. Therein, the Certificate of Incorporation was amended and provided in part:

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"The number of shares of the Corporation previously authorized to be issued, and issued, is 200 shares, having no par value. The 200 shares issued shall be changed to 1,530,000 shares of the new ten (\$.10) cents par value stock, for each no par value share previously issued."

3. The tax on changes of capital imposed by section 180 of the Tax Law was paid at the time the amended certificate was filed, based on the increase in the number of shares authorized and on the change from no par value to par value.

4. On November 19, 1971, a Certificate of Amendment of the Certificate of Incorporation of Peter Max Enterprises, Inc. was filed with the Department of State. Said amendment reduced the stated

capital of the corporation by reducing the par value of all issued common shares from \$.10 to \$.01 and by decreasing the issued common shares from 1,530,000 to 480,000 common shares. The stated capital was thus reduced from \$153,000.00 to \$4,800.00. Shareholders of the common stock would have 1 share of the new stock for each 3.1875 of \$.10 par value stock previously issued.

5. The transfer books of Peter Max Enterprises, Inc. chronicle the following transfers:

a. On March 4, 1971, old certificate No. 1 for 200 shares to Peter Max was replaced by new certificates Nos. 2 and 3 to Peter Max for 198 shares and to Neuwirth Associates for 2 shares.

b. On September 9, 1971, certificate No. 2 for 198 shares to Peter Max was transferred and two new certificates were issued, certificate No. 4 for 188 shares to Peter Max and certificate No. 5 for 10 shares to Martin Sass.

c. On November 8, 1971, certificate No. 4 for 188 shares to Peter Max was transferred and two new certificates were issued, certificate No. 6 for 178 shares to Peter Max and certificate No. 7 for 10 shares to Bernard Tannenbaum.

6. Applicants Peter Max and Peter Max Enterprises, Inc. signed a 21-page letter agreement dated February 24, 1971 which was also signed by applicant Martin Sass. Said agreement was for loans to Peter Max Enterprises, Inc. for the purpose of paying trade creditors and other business expenses. The agreement provided, in part, for an anticipated public offering of stock, a financing arrangement for \$250,000.00, a 1% common stock equity interest to be issued to Neuwirth

Associates, a designation of Martin Sass or his designee as a director of the Company and further agreement to vote his shares in the Company for his election as director. This agreement also stated that:

"The Company has filed an amendment to its certificate of incorporation increasing its authorized capital stock to 3,000,000 shares of common stock, par value \$.10 per share and the 200 presently outstanding shares are to be exchanged for 1,530,000 shares of such newly authorized stock."

7. On December 12, 1972, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due to Peter Max Enterprises, Inc. and Martin Sass. On June 20, 1973, it issued such a Notice to Peter Max, determining tax due in the following amounts: Peter Max \$1,691.25, Peter Max Enterprises, Inc. \$1,691.25 and Martin Sass \$750.00. In each instance the tax was computed by multiplying the number of shares listed as transferred on the books of the corporation by 7,650 to arrive at the number of shares transferred, predicated on the amended certificate described in Finding of Fact "2", above.

CONCLUSIONS OF LAW

A. That section 270 of the Tax Law provides that a tax is imposed on all deliveries or transfers of shares or certificates of stock whether made upon or shown on the books of the corporation whether intermediate or final, whether investing the holder with the beneficial interest in or legal title to said stock or merely with the possession or use thereof.

B. That the transactions which occurred on March 4, 1971, September 9, 1971 and November 8, 1971 constitute transfers where an interest was transferred from one party to another and are subject to the tax imposed by section 270.

C. That section 270 further provides in subdivision 3 thereof that: "It shall be the duty of the person or persons making or effectuating the sale or transfer, including the person or persons to whom the sale or transfer is made, to pay the tax provided by this article."

D. That 20 NYCRR 440.3(a) provides, after paraphrasing §270 subdivision 3, "Thus, both transferor and transferee are liable, and if a transfer is made on the books of the corporation, it is also liable."

E. That the three transfers here in issue all occurred after the amendment of the certificate on March 25, 1970 (and before the further amendment of the certificate which occurred on November 19, 1971) and that, consequently, each entry on the books regarding transfers of 2 shares, 10 shares and 10 shares refers to that number of shares multiplied by 7,650 to arrive at the correct amount of shares transferred.

F. That the applications of Peter Max, Peter Max Enterprises, Inc. and Martin Sass are denied and the notices of determination of tax due issued to Peter Max on June 20, 1973 and to Peter Max Enterprises, Inc. and Martin Sass on December 12, 1972 are sustained.

DATED: Albany, New York
September 1, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

FORMAL HEARING

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Mr. Peter Max

~~325 East 75th Street~~

New York, New York

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