

MEMORANDUM

TO : State Tax Commission

FROM : Frederick G. Hicks

SUBJECT: Paine, Webber, Jackson
& Curtis, Inc.
Refund Claim for \$1,314.17

OFFICE: Misc. Tax Bureau
Stock Transfer Tax

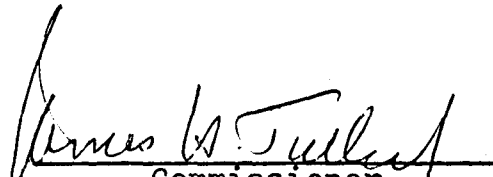
DATE : August 10, 1977

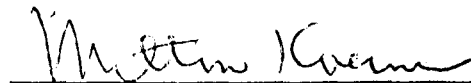
I am submitting for your approval the enclosed refund claim for \$1,314.17, from Paine, Webber, Jackson & Curtis, Inc., 25 Broad Street, New York, New York 10004. This overpayment was due to various clerical errors. You will note that an examination of this claim has been made by Senior Examiner Hyman Levy, of our New York City office.

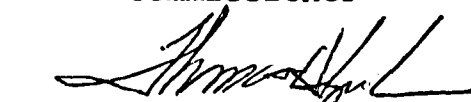
According to the information received and Mr. Levy's report, it is recommended that this claim be approved.


Director

DJD:lmj
Enclosure
CC: Louis Morgenbesser


Commissioner


Commissioner


Commissioner

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RCA - CUSHMAN & WAKEFIELD, 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 Year(s) or Period(s)~~ on :
Stamps Purchased and Affixed In October :
of 1970

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 29th day of July, 1977, she served the within
Notice of Decision by ~~(certified)~~ mail upon RCA - Cushman &
Wakefield, Inc.

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: RCA - Cushman & Wakefield, Inc.
529 Fifth Avenue
New York, NY 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

29th day of July, 1977

Marsina Donnini

Janet Wood

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RCA - CUSHMAN & WAKEFIELD, 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 (3) 12 of the :
Tax Law for the ~~Year(s) or Period(s)~~ on :
Stamps Purchased and Affixed in October
of 1970

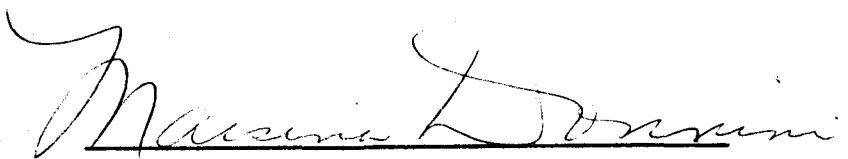
State of New York
County of Albany

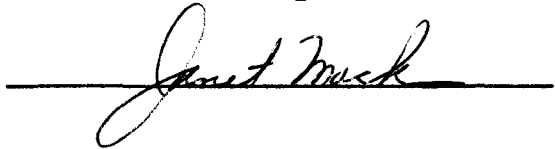
Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of July, 1977, she served the within Notice of Decision by ~~(certified)~~ mail upon Gerald J. Robinson, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Gerald J. Robinson, Esq.
Carb, Luria, Glassner, Cook & Kufeld
529 Fifth Avenue
New York, NY 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

29th day of July, 1977.







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

July 29, 1977

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

**RCA - Cushman & Wakefield
529 Fifth Avenue
New York, NY 10017**

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(s) **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 TAX COMMISSION

RCA - CUSHMAN & WAKEFIELD, 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 on Stamps :
Purchased and Affixed in October of 1970. :

Applicant, Cushman & Wakefield, Inc. (formerly RCA Products Inc.), filed an application for a hearing pursuant to section 279-a of the Tax Law, to review a determination of tax due or a determination denying a refund of stock transfer tax under Article 12 of the Tax Law on stamps purchased and affixed in October of 1970. (File No. 00381).

A formal hearing before the State Tax Commission was calendared for October 29, 1976. However, by letter of October 7, 1976, applicant requested that the matter be submitted to the State Tax Commission based on the entire record contained in the file of the Miscellaneous Tax Bureau.

The State Tax Commission, after due consideration of the entire record, renders the following decision.

ISSUES

I. Whether the simultaneous occurrence of transactions (pursuant to a plan of merger) resulted in a tax liability, pursuant to Article 12 of the Tax Law, where shares of common stock of RCA Corporation were "dropped down" into its wholly owned subsidiary, RCA Products, Inc., which in turn delivered the shares

to an Exchange Agent for distribution to the stockholders of Cushman & Wakefield, Inc., which latter corporation merged with RCA Products, Inc. and whose stock was cancelled in the merger.

II. Whether the above transaction, if deemed subject to stock transfer tax, is subject to the limited rate of tax effective on an exchange of stock within the definition of a single taxable sale, as defined in section 270-a of the Tax Law for the period from July 1, 1970 to June 30, 1971.

FINDINGS OF FACT

1. On July 30, 1970, a plan of merger was adopted by a majority of the directors of Cushman & Wakefield, Inc., and on August 11, 1970 by a majority of the board of directors of RCA Products, Inc.. The plan of merger was intended to result in a corporate reorganization whereunder RCA Corporation, a Delaware corporation, would acquire Cushman & Wakefield Inc., a New York corporation.

2. RCA Corporation "dropped down" 1,250,090 shares of its common stock in one stock certificate into RCA Products, Inc., an existing inactive subsidiary of RCA Corporation, in exchange for the balance of RCA Products, Inc.'s stock.

3. Cushman & Wakefield, Inc. merged into RCA Products, Inc. in a statutory merger pursuant to Article 9 of the Business Corporation Laws of New York. The name of RCA Products, Inc. was then changed to Cushman & Wakefield, Inc.

4. Simultaneously with the merger described in Finding of Fact "3", above, RCA Products, Inc. delivered the 1,250,090 shares of RCA Corporation stock to Irving Trust Company, a New York bank, as Exchange Agent, which stock was to be distributed to the pre-merger stockholders of Cushman & Wakefield, Inc., whose stock in that acquired corporation was cancelled in the merger. The exchange ratio was .6533 shares of RCA Corporation common stock for each share of Cushman & Wakefield, Inc. stock.

5. The Internal Revenue Service ruled that, based on sections 368(a)(1)(A) and 368(a)(2)(D) of the Internal Revenue Code, the transactions described in Findings of Fact "2", "3" and "4" qualified as exchanges pursuant to a plan of reorganization and were "tax free" for purposes of personal income tax.

6. Stock transfer tax stamps were affixed by the Irving Trust Company, a New York bank and the Exchange Agent, to the RCA Corporation certificate, and a refund in the amount of said stamps was applied for.

CONCLUSIONS OF LAW

A. That the initial transfer by RCA Corporation, of 1,250,090 shares of its stock to RCA Products, Inc. constituted the original issuance of those shares, and that such a transfer is not subject to the tax imposed by Article 12 of the Tax Law (20 NYCRR 440.1(h)).

B. That the subsequent transfer by RCA Products, Inc., of the RCA Corporation shares to the pre-merger stockholders of Cushman & Wakefield, could not constitute an original issuance of RCA Corporation stock.

C. That, though simultaneous, the delivery of the RCA Corporation certificate by RCA Products, Inc., to the exchange agent for distribution to the pre-merger Cushman & Wakefield, Inc. stockholders, was a transfer and delivery of stock subject to tax under section 270 of the Tax Law unless specific exemption is afforded for the transaction.

D. That Article 12 of the Tax Law and the Regulations of the State Tax Commission provide no exemption or example thereof for the transfer of the stock of corporation "A" held by corporation "B", where such stock is transferred to stockholders of corporation "C" which merges with corporation "B". (20 NYCRR § 440.1(j), 477.2).

E. That the transfer and delivery of the RCA Corporation stock certificate to the Exchange Agent for distribution to the pre-merger stockholders of Cushman & Wakefield, Inc. was pursuant to a statutory merger, occurred by operation of law and was thus taxable at the two and one-half cents per share rate provided for in section 270, subdivision 2 for transactions which are transfers rather than sales.

F. That rulings of the Internal Revenue Service (based on Internal Revenue Code provisions) stating that the reorganization accomplished pursuant to the plan of merger did not result in tax consequences for purposes of the personal income tax, are not determinative nor binding on this Commission with respect to the stock transfer tax imposed by Article 12 of the Tax Law.


G. That the single taxable sale rate provided in section 270-a of the Tax Law is applicable only to sales and not to transfers, and that the transaction herein was a transfer, a "no-sale" transaction, as concluded in Conclusion of Law "E", above.

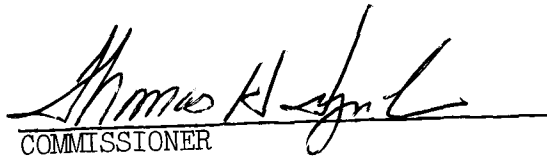
H. That the application of Cushman & Wakefield, Inc. for a refund of stock transfer tax paid was properly denied by the Miscellaneous Tax Bureau.

DATED: Albany, New York
July 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER