

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Loblaw, Inc.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision
of a Determination or a Refund of
Stock Transfer Tax
under Article 12 of the Tax Law
for the .

State of New York
County of Albany

Jay Vredenburg, 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 14th day of March, 1980, he served the within notice of Decision by mail upon Loblaw, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

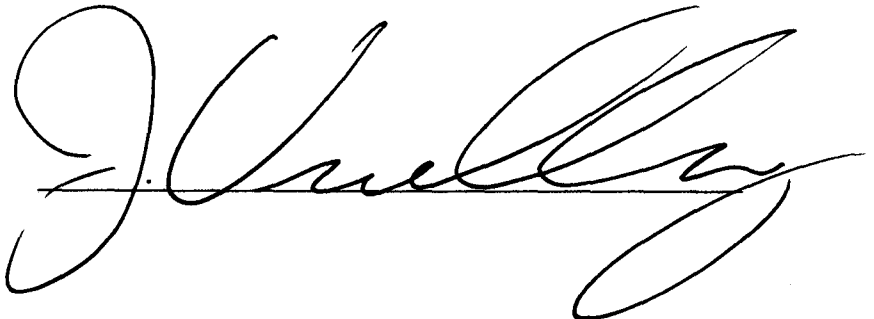
Loblaw, Inc.
c/o Canada Permanent Trust Co.
Toronto, Ont., Canada M4R 2E2

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of March, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Loblaw, Inc.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Stock Transfer Tax :
under Article 12 of the Tax Law
for the . :

State of New York
County of Albany

Jay Vredenburg, 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 14th day of March, 1980, he served the within notice of Decision by mail upon Paul A. Battaglia the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Paul A. Battaglia
Jaekle, Fleischmann & Mugel
700 Liberty Bank Bldg.
Buffalo, NY 14202

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
14th day of March, 1980.

Joanne Krapp

J. Vredenburg

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

March 14, 1980

Loblaw, Inc.
c/o Canada Permanent Trust Co.
Yonge-Englinton Ctr., 20 Englinton Ave. W.
Toronto, Ont., Canada M4R 2E2

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) 279A 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Paul A. Battaglia
Jaekle, Fleischmann & Mugel
700 Liberty Bank Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

Applicant, Loblaw, Inc., with offices at Canada Permanent Trust Company, Yonge-Eglinton Centre, 20 Eglinton Avenue West, Toronto, Ontario, Canada, M4R 2E2, filed an application for a hearing to review a determination of tax due or a determination denying a refund of stock transfer taxes under Article 12 of the Tax Law (File No. 00502).

A formal hearing was held before Alan R. Golkin, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on May 17, 1978 at 3:00 P.M. Applicant appeared by Paul A. Battaglia, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether applicant, Loblaw, Inc., a domestic corporation, is liable for stock transfer taxes on the out-of-state sale of 2,717,582 of the corporation's shares on July 5, 1973 handled through an out-of-state transfer agent, and if so, in what amount.

FINDINGS OF FACT

1. Applicant is a New York corporation with its principal office in Buffalo, New York, and had engaged the Manufacturers and Traders Trust Company

of Buffalo, New York and the Canada Permanent Trust Company of Toronto, Ontario, Canada as co-transfer agents and co-registrars of the corporation's common stock.

2. Common stock of applicant was traded "over-the-counter" in the United States and on the Toronto Stock Exchange.

3. Applicant was required by the Toronto Stock Exchange to maintain transfer and registration agents in Toronto, Ontario, Canada.

4. Applicant submitted no evidence whatsoever to establish that approval of the State Tax Commission for applicant to maintain a transfer office or transfer agent outside the State was ever requested, either before or after the subject stock transfer.

5. Applicant transacted 2,717,582 shares of its common stock on July 5, 1973 and neither the sale nor the agreement to sell, nor the memorandum of sale, nor the delivery of shares was made in New York State, and, in fact, took place in Chicago, Illinois, or Toronto, Ontario, Canada.

6. Applicant had authorized capital stock of 5,000,000 shares of common stock of which 4,082,488 shares were issued (most being outstanding) and 147,723 shares were owned by 281 shareholders with addresses of record in Canada, all as of March, 1973.

7. On December 9, 1974, the Miscellaneous Tax Bureau issued a Notice of Determination and Demand for Payment of Transfer Taxes against applicant, assessing a tax of \$68,072.05 (changed to \$67,939.58 on January 16, 1975), based on a field audit of the stock records of applicant for the period ending August 31, 1974, based on applicant's failure to comply with Tax Law section 270.6 requiring approval of out-of-state transfer agents by the State Tax Commission.

8. On March 24, 1975, applicant filed a Refund Application to recover \$67,939.55 which had been paid by applicant on December 30, 1974 to the Miscellaneous Tax Bureau pursuant to the Notice of Determination dated December 9, 1974 (and revised on January 16, 1975). Said refund application set forth as its grounds the allegations that the sale, delivery and transfer records work regarding the stock transaction herein involved took place outside New York State.

9. Applicant argued that:

(a) no stock transfer tax was due on the transaction in question by reason of section 270.6 of the Tax Law; and

(b) that in any event, the collection of tax and denial of the claim for refund violated the "Commerce Clause" of the United States Constitution and the equal protection provisions of the United States Constitution and the New York State Constitution, and were therefore void.

CONCLUSIONS OF LAW

A. That section 270.6 of the Tax Law provides as follows:

"The tax...shall not apply to shares...in any domestic... corporation,... if the transfer is made upon the books of such... corporation regularly kept at a transfer office or by a transfer agent outside the State, provided the keeping of such books outside the State is necessary or convenient for the transaction of the ordinary business affairs of such...corporation and is approved by the tax commission, and neither the sale, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this State and no act necessary to effect the transfer (other than the making of a record in the stock book kept in compliance with section ten of the stock corporation law) is done in this State."

B. That applicant, Loblaw, Inc., is a New York corporation subject to New York laws, and did transfer 2,717,582 shares of the corporation's stock on July 5, 1973 through sale and delivery by the corporation's transfer agents in Chicago, Illinois and/or Toronto, Canada.

C. That applicant failed to comply at any time with the requirements of section 270.6 of the Tax Law regarding approval from the State Tax Commission for applicant to maintain out-of-state transfer agents and to exempt share transfers from transfer tax.

D. Applicant failed to show that the keeping of books and records outside the State was approved by the State Tax Commission although it did present some evidence as to the necessity or convenience of out-of-state transfer agents.

E. That applicant's share transfer on July 5, 1973 is subject to transfer tax under section 270 of the Tax Law in the amount of \$67,939.55 since applicant failed to comply with the requirements of section 270.6 of the Tax Law.

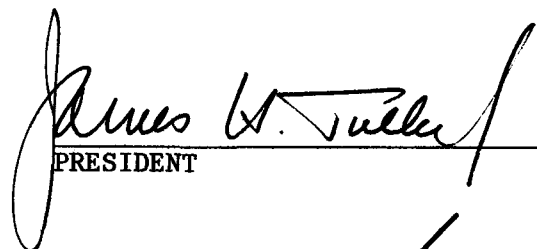
F. That the constitutionality laws of the State of New York is presumed at the administrative level of the State Tax Commission. The State Tax Commission has no jurisdiction to declare such laws unconstitutional.

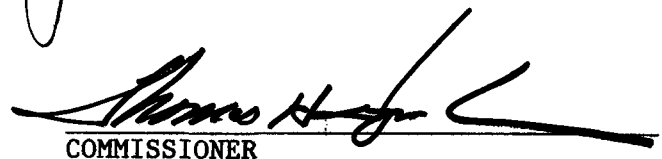
G. That the application of Loblaw, Inc. is in all respects denied.

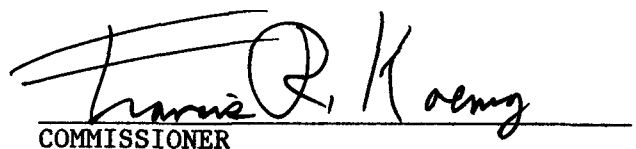
DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER