

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Bernard Tannenbaum :

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 Period 3/1/71-11/31/71. :

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 28th day of September, 1979, he served the within notice of Decision by mail upon Bernard Tannenbaum, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard Tannenbaum  
32 E. 57th St.  
New York, NY

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

28th day of September, 1979.

*J. J. Vredenburg*  
*Marcy Dominici*



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Bernard Tannenbaum  
32 E. 57th St.  
New York, NY

Dear Mr. Tannenbaum:

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 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,

A handwritten signature in cursive script, appearing to read "Robert F. Tully", followed by a horizontal line.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
BERNARD TANNENBAUM  
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 March 4,  
1971 through November 8, 1971.

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DECISION

Applicant, Bernard Tannenbaum, 32 East 57th Street, New York, New York, filed an application for a hearing to review a determination of tax due or a determination denying a stock transfer tax refund 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 William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 1, 1979 at 1:30 P.M. Appliant appeared pro se. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the transaction here in issue constitutes a transfer subject to the tax imposed by Article 12 of the Tax Law and, if it was a taxable transfer, 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, among various transfers, that 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. Applicant Bernard Tannenbaum entered into a November 8, 1971 letter agreement with Peter Max Enterprises, Inc. and Peter Max, pursuant to which applicant advanced to Peter Max Enterprises, Inc. the sum of \$50,000. Section 5 of the agreement provides as follows:

In consideration for the loan, Peter Max personally will transfer to you 10 common shares of the Company [Peter Max Enterprises, Inc.] (based on the 200 shares no par value authorized prior to the amendment of the Certificate of Incorporation). These shares which are represented by Certificate No. 7 will represent 5% of the total issued and outstanding shares as of the date that they are issued. Your 5% interest in the Company will not be diluted other than by a private placement or public offering of our shares.

7. On December 12, 1972, the Miscellaneous Tax Bureau issued a Notice of Determination of Tax Due to applicant for \$750.00. 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, predicted on the amended certificate described in Finding of Fact "2".

#### 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 transaction which occurred on November 8, 1971, constitutes a transfer where an interest was transferred from one party to another and is subject to the tax imposed by section 270.

C. That section 270 further provides in subdivision 3 thereof that "[i]t 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...."

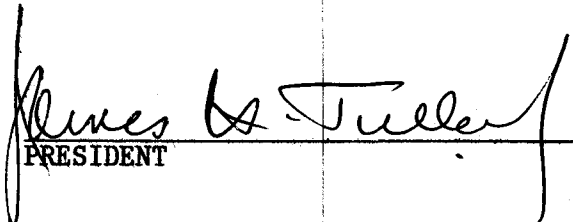
D. That the transfer here in issue occurred after the amendment of the certificate on March 25, 1970 (and before the further amendment of the certificate which occurred on November 19, 1971); consequently, the November 8, 1971 entry on the books regarding the transfer of 10 shares to applicant refers to that number of shares transferred.


E. That the application of Bernard Tannenbaum is denied and the Notice of Determination of Tax Due issued to Bernard Tannenbaum on December 12, 1972 is sustained.

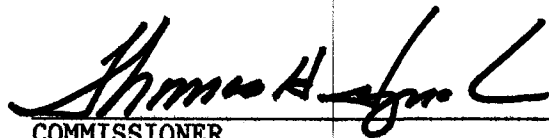
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER