

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Donald A. Forsyth, Trustee : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Stock Transfer Tax :  
under Article 12 of the Tax Law for a Transfer :  
Dated 1/3/79.

State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of January, 1984, he served the within notice of Decision by certified mail upon Donald A. Forsyth, Trustee, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald A. Forsyth, Trustee  
500 Executive Office Bldg.  
Rochester, NY 14614

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
20th day of January, 1984.

David Parshuck

James P. Haggard Authorized to administer oaths  
pursuant to Tax Law section 174

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

January 20, 1984

Donald A. Forsyth, Trustee  
500 Executive Office Bldg.  
Rochester, NY 14614

Dear Mr. Forsyth:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
DONALD A. FORSYTH, TRUSTEE	:	DECISION
	:	
for Review of a Determination or for Refund of	:	
Stock Transfer Tax Due under Article 12 of the	:	
Tax Law for a Transfer Dated January 3, 1979.	:	

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Petitioner, Donald A. Forsyth, Trustee, 500 Executive Office Building, Rochester, New York 14614, filed a petition for review of a determination or for refund of stock transfer tax due under Article 12 of the Tax Law for a transfer dated January 3, 1979 (File No. 27367).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on April 27, 1983 at 1:15 P.M., with all briefs to be submitted by August 1, 1983. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether stock transfer taxes were properly paid on a transfer of stock on January 3, 1979 from one trust to two other trusts, or whether the stock was merely reregistered in the name of a successor to the trustee of the original trust.

FINDINGS OF FACT

1. On February 16, 1979, petitioner, Donald A. Forsyth, as trustee, filed a refund application under Tax Law §280 for stock transfer taxes in the amount of \$696.75 which were paid to Lincoln First Bank Clearing Corporation, the

stock transfer agent of Eastman Kodak upon the disputed transfer<sup>1</sup> of 27,870 shares of Eastman Kodak stock on January 3, 1979 to the Marine Midland Bank, as trustee.

2. On April 10, 1979, the Audit Division denied petitioner's refund claim. The following explanation was provided:

"An examination of the pertinent records at the Lincoln First Bank of Rochester disclosed taxable transfer from the name of 'Donald A. Forsyth and Fanny<sup>2</sup>K. Allen as trustees under an agreement dated November 1, 1966 f/b/o<sup>3</sup> Fanny K. Allen' to 'Marine Midland Bank U/W of Fanny K. Allen f/b/o Sally Allen Reed' and 'Marine Midland Bank U/W of Fanny K. Allen f/b/o James J. Boddery'."

3. Petitioner claims that the Lincoln First Bank incorrectly registered the stock under the will of Fanny K. Allen instead of under the trust agreement dated November 1, 1966. The Lincoln First Bank subsequently changed its records and registered 20,000 shares of Eastman Kodak stock in the name of the Marine Midland Bank, as trustee, under the trust agreement dated November 1, 1966 of Fanny K. Allen for the benefit of Sally Allen Reed, and 7,870 shares of Eastman Kodak stock in the name of the Marine Midland Bank, as trustee, under the same trust agreement for the benefit of James J. Boddery.

4. Fanny K. Allen created an intervivos trust under a trust agreement dated November 1, 1966. She and petitioner were the initial trustees. The trust agreement was restated on August 23, 1969. Article I of the restated trust agreement provides, in part, as follows:

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<sup>1</sup> The Audit Division claims that the Eastman Kodak stock was transferred to the Marine Midland Bank, as trustee of two trusts, separate and distinct from the trust for which petitioner served as trustee. Petitioner argues that the Marine Midland Bank was merely his successor as trustee of the primary trust.

<sup>2</sup> An abbreviation of "for the benefit of".

<sup>3</sup> An abbreviation of "under will".

"Unless sooner terminated by action of either party hereto, the trust created herein shall terminate upon the death of the Grantor, and upon the happening of such event, the Trustees shall deliver all assets less a reserve for estate administration expenses and taxes then held by it hereunder to the Marine Midland Trust Company of Rochester, New York, as Trustees. The Marine Midland Trust Company shall establish two trusts with the property turned over to it. Trust Fund A shall be for the benefit of James J. Boddery. Trust Fund B shall be for the benefit of my daughter, Sally."

Article I describes in detail the trusts to be established by the Marine Midland Trust Company.

5. The trust agreement was subsequently amended six times by Fanny K. Allen prior to her death on December 9, 1977. The fourth amendment on October 26, 1970 stated, in part, as follows:

"Article 1, Subdivision 2 of the Trust directs the Trustees to fund Trust B established for the benefit of Sally A. Reed with the balance of the trust corpus remaining after debts, taxes and the funding of Trust A have been paid. I wish to modify this direction now by creating a third trust to be known as Trust C. Trust C shall be funded with the sum of \$300,000.00 before any assets are placed in Trust B. Trust C is established for the benefit of my granddaughter, Tracy A. Reed..."<sup>4</sup>

6. On September 8, 1978, the trust agreement was reformed and amended in order to satisfy the requirements of the I.R.C. §§664 and 2055<sup>5</sup> by the order of Judge Elizabeth W. Pine of the Supreme Court of the State of New York for Monroe County. Provision one of such order provides as follows:

"Upon the death of Fanny K. Allen, the said trust shall become irrevocable and...after payment or satisfaction of all such debts, taxes and expenses, Donald A. Forsyth as Trustee shall transfer all of the then principal and income of the trust estate, together with all property bequeathed to the said trust by the Grantor's Last Will

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<sup>4</sup> The sixth and last amendment of November 7, 1975 revoked the establishment of Trust C. It provided in part as follows: "I wish now to revoke the provision which established Trust C."

<sup>5</sup> §2055 provides a deduction from the gross estate (for purposes of the estate tax) for bequests to charities. §664 describes the requirements for the establishment of charitable remainder trusts which would qualify for the §2055 deductions.

and Testament, to Marine Midland Bank as Trustee of two separate charitable remainder annuity trusts, hereinafter referred to as Trust A and Trust B, to be held, administered and distributed in the manner and according to the terms and conditions hereinafter provided."

CONCLUSIONS OF LAW

A. That Tax Law §270 imposes a tax on the transfer of stock. The transfer of stock "(f)rom trustees to surviving, substitute, succeeding or additional trustees of the same trust" (emphasis added) is specifically exempted from such tax by §270-c.9.

B. That a trust agreement may create multiple trusts. The agreement may provide that after termination of a primary trust, the trust fund is to be divided into multiple secondary trusts. 61 N.Y. Jur., Trusts §44.

C. That the evidence herein demonstrates that the Marine Midland Bank was not petitioner's successor as trustee of the primary trust created on November 1, 1966. Rather, it was the trustee "of two separate charitable remainder annuity trusts" as described in the court order noted in Finding of Fact "6", supra. Therefore, petitioner is not entitled to the exemption from stock transfer tax specified in Tax Law §270-c.9.

D. That the petition of Donald A. Forsyth, Trustee, is denied.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 20 1984

Rodica Allen  
PRESIDENT

Francis Q. Koenig  
COMMISSIONER

Mark J. Melander  
COMMISSIONER