Misc. Tax Determinations #-Z
Mortgage - Land Tax
Binghamton Brick Company, Inc.

Mr. Edward Rook
Lawrence Newman
Mortgage Recording Tax
Art. 11 Secs. 251/255
Instrument Executed by
Binghamton Brick Company, Inc. to
DeAngelis Supreme Anthracite, Inc.

August 20, 1969
Hearing Room

A hearing was held by Mr. Sam Lorvan on February 27, 1968.

The instrument was recorded without payment of tax on November 14, 1966. However on April 9, 1969 a mortgage tax was paid to the Broome County Clerk in the sum of $500 with additional amount pursuant to Section 258 in the sum of $72.50, because of late payment.

Binghamton Brick Company Inc. has brought an Article 78 proceeding, returnable before September 12, 1969, for the return of the mortgage tax and additional amount.

The instrument purports to be a consolidation of three pre-existing mortgages of the same mortgagor and mortgagee aggregating $100,000 in face value. The original mortgages were issued to serve as collateral security for sales on credit of coal from the mortgagee to the mortgagor. The records of the parties show a series of advances and repayments over a period of years. Actually the amounts advanced under the original mortgages had, through a series of transactions, been repaid prior to the purported consolidation.

The Miscellaneous Tax Bureau correctly concluded that the new instrument was for the purpose of advancing new funds to the mortgagor, and as such was subject to the mortgage recording tax. Authority for their position can be found in Section 255 of the Tax Law and an opinion of the Attorney General dated December 28, 1953.

An order of determination has been drafted for the Commission which sustains the position of the operating bureau.

Credit should be noted for the notes of Mr. Arthur Maxwell of the Mortgage Tax Section which clarify a rather complex series of transactions, and helped considerably in the drafting of the determination.

Lawrence Newman
LAWRENCE A. NEWMAN
Hearing Officer

LAN/jw

/s/ OK ER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of an Instrument executed by BINGHAMTON BRICK COMPANY, INC. to DE ANGELIS SUPREME ANTHRACITE, INC.	ORDER OF DETERMINATION

This proceeding is pursuant to Sections 251 and 255 of the Tax Law to review the act of the recording officer of Broome County in recording on November 14, 1966, an instrument in the form of a mortgage consolidation and extension agreement dated November 14, 1966, executed by Binghamton Brick Company, Inc. (hereinafter called Binghamton) to DeAngelis Supreme Anthracite Inc., (hereinafter called DeAngelis) the determination of the recording officer, if any, and the application of Article Eleven of the Tax Law thereto:

Upon notices duly mailed to all interested parties, a hearing was held in the Broome County Court House in the City of Binghamton on February 27, 1968. The Binghamton Brick Company Inc. appeared and was represented by Hinman, Howard and Kattell, Esqs. (A. Edward Hill, Esq. of Counsel).

On the basis of the record, the proofs and documents submitted in the proceeding, the State Tax Commission hereby finds:

1. On March 25, 1961 Binghamton executed its mortgage to DeAngelis covering real property in the City of Binghamton and Town of Dickinson, County of Broome. Said mortgage was recorded in the office of the Clerk of Broome County on March 30, 1961 in Book 743 of Mortgages page 801.

Mortgage recording tax of $250 was paid at recording under mortgage Serial No. BD-4056.

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of an Informal Conference by

BLOOMINGDALE'S DIRE COMPANY, INC.

to

DETERMINATION

BLOOMINGDALE'S DIRECT COMPANY, INC.

This proceeding is pursuant to section 2000 of the Tax Law. The case is review the set of the preceding petitions of Bloomingdale's Direct Company to determine if, 1) a, the Commission in the form of a monthly, unpublished television commercial dated November 14, 1976, produced by Bloomingdale's Direct Company, Inc. (hereinafter called "Bloomingdale") to the extent it presented Bloomingdale's Inc., (hereinafter called "Bloomingdale") the real ownership of the production officers, 2) and, and the [illegible] which [illegible] of the [illegible] [illegible].

Both petitions duly filed in accordance with section [illegible] hearing was held in Albany County [illegible] in the City of Binghamton on February 24, 1977. The Bloomingdale's Direct Company Inc. appeared and was represented by [illegible], [illegible] Esqs. (A. Edward Hill, Esq. of Counsel).

On the basis of the record, the proceeding and testimony entitled in the proceeding, the Tax Commission hereby finds:

1. On March 24, 1976 they [illegible] and the mortgage [illegible] Bloomingdale's Direct Company, in the City of Binghamton and form of directions, [illegible] or [illegible]. [illegible] were recorded in the office of the Clerk of Broome County on March 24, 1976 in Book [illegible] Page 762 of mortgages [illegible].

Mortgage recording tax of $[illegible] was paid on recording mortgage Serial No. [illegible].

2. Simultaneously with the execution of this mortgage an agreement was entered into between Binghamton and DeAngelis which agreement is referred to in the mortgage and is part of the same transaction under which the mortgage was executed. The mortgage and agreement being simultaneously executed as part of one transaction must be read together.

When read together these instruments evidence the following:

On March 25, 1961 the date the mortgage and agreement were executed, Binghamton was indebted to DeAngelis for the amount of $35,693.26. Additional indebtedness was later secured by the mortgage so that on or about June 30, 1961 the amount of indebtedness owed by Binghamton to DeAngelis exceeded $50,000 and the full amount of $50,000 had become secured by the mortgage.

The agreement recites on pages 2 and 3 paragraph No. 4:

"..... it being intended that on December 15th of each year the balance owing by the Brick Co. to the Coal Co., for all coal shipped by the Coal Co. to the Brick Co. prior to November 15th of such year shall not exceed the sum of $12,000 but that monies owing by the Brick Co. to the Coal Co. for coal shipped by the Coal Co. to the Brick Co. during the period from each November 15th to the following June 15th shall be an open account, and shall be, to the extent permitted above, secured by the mortgage above referred to and repaid as above provided, provided, however, that the total amount owing by the Brick Co. to the Coal Co. shall not, at any time, exceed the sum of $50,000."

3. Additional advances were made by DeAngelis to Binghamton and payments made by Binghamton to DeAngelis. On October 31, 1961 the amount owing by Binghamton to DeAngelis was $50,707.39 On November 1, 1961 Binghamton executed another mortgage to DeAngelis

recorded in said office on November 1, 1961 in Book 751 of Mortgages at page 916.

Mortgage recording tax of $50 was paid at recording and entered under mortgage Serial No. BE-2725.

4. Advances and re-payments continued to be made between the parties until January 1, 1963 at which time the indebtedness owed by Binghamton to DeAngelis was $86,315.68. On January 26, 1963 Binghamton executed another mortgage to DeAngelis recorded in said office on February 8, 1963 in Book 767 of Mortgages at page 873.

Mortgage recording tax of $200 was paid at recording and entered under mortgage Serial No. BF-3944.

5. Advances and re-payments continued to be made by the parties. On October 31, 1966 Binghamton owed DeAngelis $114,741.56. On November 14, 1966 Binghamton and DeAngelis entered into an agreement entitled Consolidation and Extension Agreement, recorded in said office on November 14, 1966 on Book 814 of Mortgages at page 817.Mortgage tax was not paid at the time of recording the said instrument.

On or about April 9, 1969 mortgage tax in the sum of $500 with additional amounts of $72.50 as provided in section 258 of the Tax Law was paid to the recording officer of Broome County. Said addition amount one half percent per month on tax due of $500 from November 14, 1966.

6. On or before August 31, 1962 Binghamton had re-paid to DeAngelis the entire $50,000 loaned or advanced on the March 25, 1961 mortgage.

On or before October 31, 1962 Binghamton had re-paid to DeAngelis the entire $10,000 loaned or advanced on the November 1, 1961 mortgage.

On January 26, 1963, no part of the indebtedness secured by the two mortgages remained unpaid. The sum of not less than

[illegible] in note office on November [illegible], [illegible] in book [illegible] of [illegible] at page [illegible].

Mortgage recording tax of $[illegible] was paid and recorded and entered under mortgage serial No. [illegible].

[illegible]. Between and [illegible] conditions to be taken by [illegible] the mortgagee until [illegible], [illegible] of [illegible] the indebtedness used by mortgagor to acquire the [illegible]. On November [illegible], [illegible] mortgagee assigned mortgage to [illegible] in note office on November [illegible], [illegible] in book [illegible] of [illegible] at page [illegible].

Mortgage recording tax of $[illegible] was paid and recorded and entered under mortgage serial No. [illegible].

[illegible]. Between and [illegible] conditions to be taken by the parties. On [illegible], [illegible] mortgagor used [illegible] [illegible]. On November [illegible], [illegible] mortgagor and [illegible] entered into an agreement entitled "[illegible] and [illegible] Agreement", recorded in note office on November [illegible], [illegible] in book [illegible] of [illegible] at page [illegible]. [illegible] was paid at the time of recording the main instrument.

In an amount [illegible], [illegible] mortgage tax [illegible] was paid at $[illegible] with additional amount of $[illegible]. To be recorded in [illegible] of the [illegible] was paid to the recording officer [illegible]. Said addition bears the [illegible] [illegible] on the [illegible] [illegible] November [illegible], [illegible].

[illegible]. In consideration [illegible], [illegible] [illegible] [illegible] [illegible] the amount $[illegible] loaned [illegible] on the [illegible], [illegible] mortgage.

On or before October [illegible], [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] mortgage.

On [illegible] 20, [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] the two mortgage [illegible]. [illegible] [illegible] [illegible]

$86,315.68 was new indebtedness, $40,000 of which became secured by the mortgage dated January 26, 1963.

7. Advances and re-payments continued to be made by the parties. The entire $40,000 secured by the January 26, 1963, mortgage was re-paid by Binghamton on or about October 31, 1963.

On October 31, 1966 there was owing by Binghamton to DeAngelis the sum of $114,741.56 none of which was secured by the three mortgages.

The agreement of November 14, 1966 evidences new indebtedness in the principal sum of $100,000.

8. Even though re-advances are provided for by the original mortgage they create a further debt than the original principal amount although they can never increase the outstanding debt secured by the mortgage beyond that total sum. Under such circumstances the amount which may be secured is always determinable and the re-advance agreement is a taxable supplemental instrument." (Opinion of Attorney General, December 28, 1953).

Now therefore, after due consideration, it is DETERMINED BY THE COMMISSION that:

At recording on November 14, 1966, of the consolidation and extension agreement mortgage, recording tax in the sum of $500 was due and was properly collected by the recording officer on or about April 9, 1969 with additional tax as provided in Section 258 of the Tax Law in the sum of $72.50 for the following reasons:

1. That the full amount of $100,000 had been advanced under the prior mortgages.
2. That the full amount of $100,000 had been repaid under the prior mortgages.

3. That a new or further indebtedness in the amount of $100,000 is created by the consolidation and extension agreement of November 14, 1966 pursuant to the provisions of Section 250, to suit, "....." A contract or agreement by which the indebtedness secured by any mortgage is increased or added to shall be deemed a mortgage of real property for the purpose of this article and shall be taxable as such upon the amount of such increase or addition.

4. That a new or further indebtedness is created by said consolidation and extension agreement pursuant to the provisions of Section 255, to suit ".... such additional instrument or mortgage shall not be subject to taxation under this article, unless it creates or secures a new or further indebtedness or obligation other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the recorded primary mortgage, in which case, a tax is imposed as provided by Section 253, of this chapter on such new or further indebtedness or obligation.....".

Dated: Albany, New York, this 3rd day of Sept., 1969.

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce Manley
COMMISSIONER

Milton Kramer
COMMISSIONER

[illegible] shall be construed as the measure of [illegible] 1,000 L. according to the provisions and [illegible] agreement or recognize the [illegible] of London [illegible] to [illegible] ..... A contract or agreement by which the indemnitee [illegible] any portion of liquidated damages shall be deemed [illegible] void [illegible] for the purpose of this section and shall be [illegible] upon the [illegible] of such [illegible] condition.

[illegible] or [illegible] [illegible] consolidation [illegible] provisions of section [illegible] to [illegible] ..... [illegible] indemnitee [illegible] shall not be subject to [illegible] under this section, unless it [illegible] or further indemnification or [illegible] other than the [illegible] indemnification [illegible] required by [illegible] [illegible] contracts, [illegible] by the [illegible] [illegible] accounts, in which case, [illegible] be limited to [illegible] provided by section [illegible] of this [illegible] [illegible] further in [illegible] or [illegible] .....

Added: [illegible], New York, [illegible] 2nd day of Sept. [illegible]

[illegible]

Mr. Edward Rook
Lawrence Newman
Mortgage Recording Tax
Art. 11 Secs. 251/255/258
Mortgage executed by
Champlain Brick Company
of Mechanicville to
DeAngelis Supreme Anthracite, Inc.

August 25, 1969
Hearing Room

A hearing was held by Mr. Sam Lorvan on February 27, 1968.

The mortgage was recorded without payment of tax on December 15, 1966 based upon two affidavits submitted to the Recording Officer by the president of DeAngelis.

Champlain is a wholly owned subsidiary of the Binghamton Brick Co., Inc. A related matter concerning the identical facts and the Binghamton Company should be considered at the same time.

In each case the parties have purported to have consolidated three pre-existing mortgages executed by Binghamton to DeAngelis. The results are an alleged consolidation agreement executed by Binghamton and filed in Broome County, and a mortgage executed by Champlain and filed in Rensselaer County.

Based upon a review of a complex series of transactions enumerated in the determination, I have concluded that the mortgage here in question represents a new indebtedness and subject to the mortgage recording tax.

Therefore, the order of determination being submitted for the approval of the Commission orders the Clerk of Rensselaer County to impose the tax and penalties on the recording.

LAWRENCE NEWMAN
Hearing Officer

LN:jw

/s/ OK ER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of an Instrument executed by CHAMPLAIN BRICK COMPANY OF MECHANICVILLE, a CORPORATION to DE ANGELIS SUPREME ANTHRACITE, INC.	ORDER OF DETERMINATION

This proceeding is pursuant to Sections 251,255 and 258 of the Tax Law to review the act of the recording officer of Rensselaer County in recording on November 14, 1966, an instrument in the form of a mortgage dated November 14, 1966, executed by Champain Brick Company of Mechanicville,(hereinafter called Champlain) to DeAngelis Supreme Anthracite Inc., (hereinafter called DeAngelis) the determination of the recording officer, if any, and the application of Article Eleven of the Tax Law thereto:

Upon notices duly mailed to all interested parties, a hearing was held in the Broome County Court House in the City of Binghamton on February 27, 1968. The Champlain Brick Company of Mechanicville appeared and was represented by Hinman, Howard and Kattell, Esqs. (A. Edward Hill, Esq. of Counsel).

On the basis of the record, the proofs and documents submitted in the proceeding, the State Tax Commission hereby finds:

1. On March 25, 1961, Binghamton Brick Company Inc. (hereinafter called Binghamton) executed its mortgage to DeAngelis covering real property in the City of Binghamton and Town of Dickinson, County of Broome. Said mortgage was recorded in the office of the Clerk of Broome County on March 30, 1961 in Book 743 of Mortgages page 801.

[illegible]

Mortgage recording tax of $250 was paid at recording under mortgage Serial No. BD-4056.

2. Simultaneously with the execution of this mortgage an agreement was entered into between Binghamton and DeAngelis which agreement is referred to in the mortgage and is part of the same transaction under which the mortgage was executed. The mortgage and agreement being simultaneously executed as part of one transaction must be read together.

When read together these instruments evidence the following:

On March 25, 1961 the date the mortgage and agreement were executed, Binghamton was indebted to DeAngelis for the amount of $35,693.26. Additional indebtedness was later secured by the mortgage so that on or about June 30, 1961 the amount of indebtedness owed by Binghamton to DeAngelis exceeded $50,000 and the full amount of $50,000 had become secured by the mortgage.

The agreement recites on pages 2 and 3 paragraph No. 4:

"..... it being intended that on December 15th of each year the balance owing by the Brick Co. to the Coal Co., for all coal shipped by the Coal Co. to the Brick Co. prior to November 15th of such year shall not exceed the sum of $12,000 but that monies owing by the Brick Co. to the Coal Co. for coal shipped by the Coal Co. to the Brick Co. during the period from each November 15th to the following June 15th shall be an open account, and shall be, to the extent permitted above, secured by the mortgage above referred to and repaid as above provided, provided, however, that the total amount owing by the Brick Co. to the Coal Co. shall not, at any time, exceed the sum of $50,000."

3. Additional advances were made by DeAngelis to Binghamton and payments made by Binghamton to DeAngelis. On October 31, 1961 the amount owing by Binghamton to DeAngelis was $50,707.39. On November 1, 1961 Binghamton executed another mortgage to DeAngelis

recorded in said office on November 1, 1961 in Book 751 of Mortgages at page 916.

Mortgage recording tax of $50 was paid at recording and entered under mortgage Serial No. BE-2725.

4. Advances and re-payments continued to be made between the parties until January 1, 1963 at which time the indebtedness owed by Binghamton to DeAngelis was $86,315.68. On January 26, 1963 Binghamton executed another mortgage to DeAngelis recorded in said office on February 8, 1963 in Book 767 of Mortgages at page 873.

Mortgage recording tax of $200 was paid at recording and entered under mortgage Serial No. BF-3944.

5. Advances and re-payments continued to be made by the parties. On October 31, 1966 Binghamton owed DeAngelis $114,741.56. On November 14, 1966 Binghamton and DeAngelis entered into an agreement entitled Consolidation and Extension Agreement, recorded in said office on November 14, 1966 of Book 814 of Mortgages at page 817. Mortgage tax was not paid at the time of recording the said instrument.

On or about April 9, 1969 mortgage tax in the sum of $500 with additional amounts of $72.50 as provided in section 258 of the Tax Law was paid to the recording officer of Broome County. Said addition amount one half percent per month on tax due of $500 from November 14, 1966.

6. On or before August 31, 1962 Binghamton had re-paid to DeAngelis the entire $50,000 loaned or advanced on the March 25, 1961 mortgage.

On or before October 31, 1962 Binghamton had re-paid to DeAngelis the entire $10,000 loaned or advanced on the November 1, 1961 mortgage.

On January 26, 1963, no part of the indebtedness secured by the two mortgages remained unpaid. The sum of not less than

recorded in said office on November 1, [illegible] in Book [illegible] of Mortgages, at page 614.

Mortgage accounting tax of $[illegible] was paid at recording and entered under mortgage Serial No. [illegible].

4. Advances and disbursements continued to be made between the parties until January 1, 1969 at which time the indebtedness owed by Mangiardon to Mangiardi was $[illegible]. On January 20, 1969 Mangiardon executed another instrument in Mangiardi's favor in said office on January 8, 1969 in Book [illegible] of Mortgages at page 872.

Mortgage recording tax of $[illegible] was paid at recording and entered under mortgage Serial No. [illegible].

5. Advances and disbursements continued to be made by the parties. On October 31, 1969 Mangiardon owed Mangiardi $[illegible].

On November 14, 1969 Mangiardon and Mangiardi entered into an agreement entitled Consolidation and Extension Agreement, recorded in said office on November 14, 1969 as Book 614 of Mortgages at page 617. Mortgage tax was not paid at the time of recording the said instrument.

On or about April 1, 1970 mortgage tax in the sum of $[illegible] with additional amounts of $[illegible] in accordance to section 258 of the Tax Law was paid to the recording officer of Queens County. Said addition amount one half percent per month on tax due of $[illegible] from November 14, 1969.

6. On or before August 31, 1970 Mangiardon had paid to Mangiardi the entire $[illegible] loaned in advance on the March 25, 1961 mortgage.

On or before October 31, 1970 Mangiardon had paid to Mangiardi the entire $[illegible] loaned in advance on the November 1, 1961 mortgage.

On January 20, 1971, no part of the indebtedness secured by the two mortgages remained unpaid. [illegible]

$86,315.68 was new indebtedness, $40,000 of which became secured by the mortgage dated January 26, 1963.

7. Advances and re-payments continued to be made by the parties. The entire $40,000 secured by the January 26, 1963, mortgage was re-paid by Binghamton on or about October 31, 1963.

On October 31, 1966 there was owing by Binghamton to DeAngelis the sum of $114,741.56 none of which was secured by the three mortgages.

8. On November 14, 1966, Champlain executed a mortgage to DeAngelis covering real property in the Town of Schaghticoke, County of Rensselaer. Said mortgage was recorded in the office of the Clerk of Rensselaer County on December 15, 1966 in Book 1043 of mortgages, page 468.

The mortgage states that Binghamton is the owner of all the stock of Champlain and in addition, a business affiliate. The mortgage also states that it is given and intended as additional security for the indebtedness due upon the three mortgages previously executed by Binghamton dated March 25, 1961, November 1, 1961 and January 26, 1963 which have been filed in the Broome County Clerk's Office.

The mortgage was accepted and filed by the Recording Officer of Rensselaer County without payment of Mortgage Recording tax based upon affidivits submitted to the County Clerk on December 5, 1966 and January 10, 1967 by the president of DeAngelis.

The mortgage of November 14, 1966 executed by Champlain to DeAngelis evidences new indebtedness in the principal sum of $100,000.

9. Even though re-advances are provided for by the original mortgage they create a further debt than the original principal amount although they can never increase the outstanding debt secured by the mortgage beyond that total sum. Under such circum-

$[illegible]$,315.00 was not indebted, and [illegible] which [illegible] by the mortgage dated January [illegible], [illegible].

7. [illegible] advances are [illegible] [illegible] parties. The amount [illegible] recorded on the January [illegible], [illegible] mortgages [illegible] January [illegible], [illegible].

[illegible] the sum of $[illegible] [illegible] mortgages.

8. On [illegible] [illegible] mortgaged [illegible] [illegible] County of [illegible]. [illegible] of the Town of [illegible] [illegible] [illegible] [illegible] of [illegible], [illegible].

The mortgage [illegible] stock of [illegible] and in addition, [illegible] mortgage also [illegible] be given [illegible] additional security for the indebtedness [illegible] [illegible] [illegible] [illegible] January [illegible], [illegible] [illegible] [illegible] [illegible] [illegible].

The mortgage was [illegible] by [illegible] of Bancroftian County [illegible] based upon [illegible] [illegible] [illegible] [illegible] [illegible] and January [illegible], [illegible] by the [illegible] [illegible].

On [illegible] of November [illegible], [illegible] [illegible] [illegible] evidence [illegible] [illegible] [illegible] [illegible] [illegible].

9. Even though [illegible] mortgages [illegible] [illegible] mortgage may create a [illegible] debt than the [illegible] amount although they can never increase the [illegible] secured by the mortgage beyond the total sum. [illegible] [illegible]

stances the amount which may be secured is always determinable and the re-advance agreement is a taxable supplemental instrument. (Opinion of Attorney General, December 28, 1953).

Now therefore, after due consideration, it is DETERMINED BY THE COMMISSION that:

At recording on December 15, 1966 of the mortgage, recording tax in the sum of $500 was due and payable for the following reasons:

1. That the full amount of $100,000 had been advanced under the prior mortgages.
2. That the full amount of $100,000 had been repaid under the prior mortgages.
3. That a new or further indebtedness in the amount of $100,000 is created by the mortgage of November 14, 1966' pursuant to the provisions of Section 250, to suit, "...." A contract or agreement by which the indebtedness secured by any mortgage is increased or added to shall be deemed a mortgage of real property for the purpose of this article and shall be taxable as such upon the amount of such increase or addition.
4. That a new or further indebtedness is created by said mortgage pursuant to the provisions of Section 255, to suit "..... such additional instrument or mortgage shall not be subject to taxation under this article, unless it creates or secures a new or further indebtedness or obligation other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the recorded primary mortgage, in which case, a tax is imposed as provided by Section 253, of this chapter on such new or further indebtedness or obligation, ...".

NOW, THEREFORE, IT IS ORDERED:

(1) Pursuant to Section 253 of the Tax Law, the Recording Officer of Rensselaer County shall impose the Mortgage Recording tax upon the recording of the said mortgage executed by Champlain Brick Company of Mechanicville to DeAngelis Supreme Anthracite Inc., dated November 14, 1966, and filed with the Clerk of Rensselaer County on December 15, 1966 at Book 1043 of mortgages at page 468.

(2) The said tax shall be computed at fifty cents for each hundred dollars on a principal obligation of $100,000, or the sum of $500.

(3) Pursuant to Section 258, of the Tax Law, an additional amount shall be added to the tax equal to one-half of one per cent per month from the filing date until the said tax is paid.

(4) Pursuant to Section 258, of the Tax Law, the said mortgage shall not be released, discharged of record, or received in evidence, nor shall any assignment or agreement extending any such mortgage be recorded unless the taxes imposed herein have been paid.

Dated: Albany, New York, this 3rd day of September, 1969.

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER

[illegible] unless [illegible]

[illegible] 3rd [illegible] September, [illegible] 19[illegible].

Mr. Edward Rook
Lawrence Newman
Mortgage Recording Tax
Article 11, Sections 251 and 256
An instrument executed by Binghamton Brick Co., Inc. to Coal Brook Iron and Metal Co., Inc.

August 25, 1969
Hearing Room

A hearing was held by Mr. Sam Lorvan on February 27, 1968.

The instrument was recorded on November 14, 1966. At the time a mortgage tax of $30.00 was paid to the Broome County Clerk.

In drafting the provisions of the mortgage in question, Binghamton Brick Co., Inc. has created ambiguous language which has, in turn, made the security intended by this mortgage to be indeterminable.

Pursuant to Section 256 of the Tax Law, the alternative value upon which the mortgage tax may be based is an appraised valuation of the property covered by the instrument.

The Recording Officer had determined the valuation of the property to be $289,400.00. As a result, additional mortgage tax and penalties in the amount of $1622.47 was received from Binghamton Brick Co., Inc. on April 7, 1969.

An order of determination has been drafted for the Commission which sustains the determination and action of the Recording Officer in collecting this additional amount.

Binghamton Brick Co., Inc. has brought an Article 78 proceeding, returnable before September 12, 1969 for the return of the additional mortgage tax and penalty.

LAWRENCE NEWMAN

LN:jw

/s/ OK ER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of an Instrument in the form of a Mortgage Executed by BINGHAMTON BRICK COMPANY, INC. to COAL BROOK IRON & METAL COMPANY, INC.	ORDER OF DETERMINATION

This proceeding is pursuant to Sections 251 and 256 of the Tax Law to review the Act of the Recording Officer of Broome County in recording on November 14, 1966 an instrument in the form of a mortgage dated November 14, 1966, executed by Binghamton Brick Co., Inc. (hereinafter called Binghamton), to Coal Brook Iron & Metal Company, Inc. (hereinafter called Coal Brook), the determination of the Recording Officer, if any, and the application of Article 11 of the Tax Law thereto.

Upon notices duly mailed to all interested parties, a hearing was held in the Broome County Court House in the City of Binghamton on February 27, 1968. Binghamton appeared and was represented by Hinman, Howard and Kattell, Esqs. (A. Edward Hill, Esq., of Counsel).

On the basis of the record, the proofs and documents submitted in the proceeding, the State Tax Commission hereby finds:

1. On November 14, 1966, an instrument in the form of a mortgage was executed by Binghamton to Coal Brook and recorded in the office of the Clerk of Broome County on November 14, 1966 in Book 814 of mortgages at page 764. Mortgage recording tax of thirty dollars was paid at recording under mortgage Serial No. BJ-2555.

2. The following is quoted therefrom:

"WITNESSETH: That to secure the payment of indebtedness in the sum of $6,000 lawful money of the U.S., or such portion

thereof as may now or hereafter from time to time be due and owing by the mortgagor to the mortgagee on the account of the mortgagor with the mortgagee, the mortgagor hereby mortgages to the mortgagee: ALL THOSE CERTAIN PIECES OR PARCELS OF LAND ***."

"FIRST: This mortgage is intended to secure and does secure the payment of all claims, accounts, charges, liens, encumberances, and other sums, including interest thereon, if any, whether now existing or hereafter created; and whether now or hereafter due or payable owing by the mortgagor to the mortgagee."

The maximum indebtedness which by any contingency may be secured by mortgage is not determinable by the terms of the mortgage.

3. Where such maximum amount is not ascertainable from the terms of the mortgage, Section 256 becomes applicable. This statute permits the filing at recording of a statement of maximum amount secured by the mortgage, and provides that such amount shall, at all times, be binding and conclusive against the mortgagee and its assigns and shall create an estoppel in any proceeding for foreclosure or enforcement.

Neither Binghamton nor Coal Brook had filed the permitted statement under Section 256 of the Tax Law at the time of the recording of the mortgage.

Binghamton concedes that at the time of the recording of the mortgage, its officer charged with said responsibility, knew that said instrument was in the nature of a mortgage and said recording was subject to Article 11 of the Tax Law.

4. Pursuant to Section 258 of the Tax Law, the alternative method of determining the tax computed upon the value of the property covered as of the date of recording was followed.

Based upon appraisals of the property by two competent, disinterested persons, the recording officer of Broome County computed the value of the property covered to be $289,400.

thereof as may now or hereafter from time to time be due and owing by the mortgagor to the mortgagee on the account of the mortgagor with the mortgagee, the mortgagor hereby covenants to the mortgagee:

"(a) THAT: This mortgage is intended to secure and shall secure the payment of all existing, accrued, current, floor, contingent, and other sums, including interest thereon, if any, whether now existing or hereafter created; and whether now or hereafter due or payable owing by the mortgagor to the mortgagee.

The maximum indebtedness which by any construction may be secured hereunder is not determinable by the terms of the mortgage.

2. Where such maximum amount is not ascertainable from the terms of the mortgage, section 25 becomes applicable. This statute permits the filing of a statement of an unknown amount secured by the mortgage, and provides that such amount shall at all times, to binding and conclusive against the mortgagor and its assigns and shall cause an estoppel in any proceeding for foreclosure or enforcement.

Neither Binghamton nor Hull knew and did not the contended statement under section 25 of the statement the time of the recording of the mortgage.

Binghamton concedes that at the time of the recording of the mortgage, its officer charged with such responsibility, knew that said instrument was in the nature of a mortgage and said recording was subject to Article 11 of the Tax Law.

4. Pursuant to Section 250 of the Tax Law, the administrative method of determining the [illegible] upon the value of the property covered by the lien of the recording was followed.

Based upon appraisals of the property by two competent, disinterested persons, the recording officer of Broome County computed the value of the property covered to be $[illegible].

5. Pursuant to Section 253 of the Tax Law, the mortgage tax was recomputed as follows:

Tax on $289,400 at 50¢ per $100 equals	$1477.00
Less previously paid upon filing of the instrument	30.00
Balance of Tax due and payable	$1417.00
Plus additional amount by reason of late payment (Sec. 258).	205.47
Total amount due and payable	$1622.47

On or about April 7, 1969, Binghamton paid in to the Clerk of Broome County the sum of $1622.47 under protest.

Now therefore, after due consideration, it is DETERMINED BY THE COMMISSION THAT:

(A) The mortgage executed by Binghamton to Coal Brook, dated November 14, 1966 is for an indeterminate amount.

(B) At the time of the recording of the mortgage, the parties failed to file a statement of the maximum amount secured by the mortgage.

(C) Pursuant to Section 258 the tax has been correctly determined based upon the value of the property covered in the amount of $289,400.

(D) The amounts of Mortgage Tax and additional amounts due by reason of late payment, all aggregating $1652.47 were correctly collected by the recording officer of Broome County as follows:

November 14, 1966	$30.00
April 7, 1969	1622.47
TOTAL	$1652.47

(E) Now therefore, the aforesaid determinations of the Recording Officer are found to be correct and are hereby sustained.

Dated, Albany, New York this 3rd day of September, 1969.

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce Manley
COMMISSIONER

Walter Kiesner
COMMISSIONER

(4) Now therefore, the proposed determination of the accounting officers are found to be correct and are hereby authorized.

Dated, Tibeke, this 10th day of September, 1988.

BY ORDER OF THE COMMISSION

_____
SECRETARY

_____
MEMBER

_____
MEMBER

DEPARTMENT OF TAXATION AND FINANCE

EDWARD ROOK

Mr. Rook:

Re: BINGHAMTON BRICK CO.
(Art. 11 Hearing Matter)

Mr. Schapiro is very anxious to talk with you on the above case which has been assigned to Larry Newman. It seems that an Art. 78 proceeding is being brought on later this month, so Mr. Schapiro feels there is some urgency in the situation. His Ext. is 73697.

Grace

8/13/69

P.s. He has spoken with Larry Newman who is prepared to discuss he case with you.