

To STATE TAX COMMISSION

*Continuation of 2nd reading by  
Holt, 13, 50. - C. H. Holt*

*one of the 26/67  
8/15/67. J. W. S.*

**From Edward R**

**From Edward Rook**

**BUREAU OF LAW  
MEMORANDUM**

*Mass. Tax Determination  
Mortgage Recording Tax  
A-2  
Chrysler Properties, Inc.*

**TO:** Commissioners Murphy, Macduff and Conlon  
**FROM:** E. H. Best, Counsel  
**SUBJECT:** Chrysler Properties, Inc.  
Mortgage Recording Tax

On July 18, 1966 the entire file was forwarded to the Tax Commission together with a proposed determination granting a refund of mortgage taxes. The proposed determination was approved by Commissioner Macduff and then forwarded to Commissioner Palestin for review. The matter was later retained by him after his resignation as a member of the State Tax Commission for his advice and recommendation.

Commissioner Palestin, as Law Consultant to Counsel, has submitted a memorandum attached hereto to the effect that the mortgage recording tax referable to \$13,500,000 of the mortgage principal was properly required by the recording officer and that the application for refund of \$67,500 should be denied.

After reviewing Commissioner Palestin's memorandum, I am still of the opinion that the tax should be refunded as expressed in my memorandum to Deputy Commissioner Rowley dated January 27, 1966, a copy of which is hereto attached.

If you agree that the mortgage recording tax should be refunded please sign the original and two copies of the proposed determination granting such refund and forward the entire file to the Law Bureau for further disposition. If, however, you agree with Commissioner Palestin that the refund should be denied, please forward the entire file together with your notation to that effect, in order that a proposed determination be prepared denying the refund in accordance with the opinion expressed in Commissioner Palestin's memorandum.

I believe that the review by the Commission should be made on substantive grounds and not on the further procedural grounds urged by Commissioner Palestin. It should be borne in mind that although the Tax Commission and Counsel are interested in achieving a result based solely upon available statutory law and court decisions, the city register is also motivated by a concern for tax revenues.

/s/

E. H. BEST

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Counsel

MS:bdg  
February 6, 1967

## BUREAU OF LAW

## MEMORANDUM

TO: Commissioners Murphy, Pelestin and Macduff

FROM: E. H. Best, Counsel

SUBJECT: Chrysler Properties, Inc.  
Mortgage Recording Tax

Transmitted herewith is the entire file in the above matter, together with a proposed determination granting a refund of mortgage recording tax for your consideration.

Pursuant to an application having been made by Chrysler Properties, Inc. for a refund of mortgage recording tax in the sum of \$67,500 paid to the recording officer of New York County, a hearing was held by Mr. Samuel Lorven. Subsequent to such hearing the entire file was reviewed by the Law Bureau and a memorandum issued to Deputy Commissioner Rowley stating my opinion that the mortgage recording tax should be refunded. In accordance with such recommendation, a short form order was prepared by the Miscellaneous Tax Bureau granting a refund, which order was signed by Mr. Rowley on February 4, 1966 in accordance with the well-recognized and long-standing policy of the Tax Commission delegating such authority to the Director of the Miscellaneous Tax Bureau. A copy of the memorandum and order are hereto attached.

The recording officer of New York County refused to issue a refund, primarily on the ground that the order was not signed by the members of the Commission. A mandamus proceeding was instituted by Chrysler Properties, Inc. against the recording officer to compel the issuance of a refund. The Supreme Court, New York County, by Mr. Justice Taubman, rendered a decision, a copy of which is hereto attached, stating that the order was invalid since the members of the Commission may not delegate such authority to a deputy. I agree with such opinion.

During the brief period when hearings were held by members of my staff, I required the proposed determination to be prepared for the signatures of the members of the Tax Commission and such few determinations which had been heard by personnel of the Law Bureau have so been processed. However, upon re delegating the hearings to the Miscellaneous Tax Bureau, the old procedure was readopted.

Since the Supreme Court decision holds that the determination is not valid, I am resubmitting a proposed determination granting a refund, prepared for the signatures of members of the Tax Commission.

Commissioners Murphy,  
Palestin and Macduff

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I believe it advisable that in the future all determinations of mortgage tax should be prepared for signature by the three members of the Tax Commission, and should contain a brief statement of the facts necessary to support the determination.

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Counsel

July 18, 1966

MS:cp

Encs.

## BUREAU OF LAW

## MEMORANDUM

TO: Deputy Commissioner Rowley  
Attention Mr. Samuel Lervan

FROM: E. H. Best, Counsel

SUBJECT: CHRYSLER PROPERTIES, INC.  
Mortgage Recording Tax

An original indenture of mortgage was made on March 1, 1950 by W. P. Chrysler Corporation to Central Hanover Bank & Trust Company, trustee for \$12,500,000 on the fee ownership of one parcel and the leasehold ownership of another parcel. Thereafter, five supplemental indentures were entered between the trustee and successor owners of the fee and leasehold interests in accordance with the terms of the indenture which provided for the issuance of such supplemental indentures. At the time of the fifth supplemental indenture, March 1, 1950, Webb & Knapp, Inc. and Graybar Corporation as tenants in common were the owners of the fee and the leasehold respectively. The indebtedness had been reduced to \$23,028,000 prior to the issuance of the sixth supplemental indenture of the instrument in question. Thereafter, mesne owners entered into second mortgages which mortgages were consolidated into a single second mortgage amounting to \$23,500,000 at the time of the sixth supplemental indenture.

On August 6, 1954, the following transactions took place. The consolidated second mortgage was assigned by the lending institution Chase Manhattan Bank to the trustee (now the Chemical Bank New York Trust Company), and a third mortgage in the amount of \$10,472,000 was entered into between Chrysler Properties, Inc. and the Chemical Bank New York Trust Company.

The sixth indenture was entered into between Chrysler Properties, Inc. consolidating all the above mortgages spreading the lien over properties covered by the second and third mortgages and providing for the issuance of certain notes in the total principal outstanding indebtedness. The sixth indenture provides that all the prior mortgages should not be extinguished or discharged and that the holders of existing notes were to exchange the same for the new notes.

Mortgage recording tax was paid on all prior mortgages. The recording officer demanded the payment of tax on the recording of the indenture based upon the principal indebtedness remaining on the consolidated second mortgage. He contended that the issuance of notes secured by such mortgage results in a creation of an additional and further indebtedness. I do not agree. The mere

assumption of Chrysler Properties, Inc. of the mortgage indebtedness did not create a new indebtedness.

I believe that the spreading over of additional properties does not create a new lien. Secondly, the mere exchange of the forms of bond indebtedness, instead of their retirement will not give rise to a new obligation (Fifth Avenue & 46th Street Corp. v. Bragalini, 4 A D 2d 387). Thirdly, the assumption by Chrysler of the obligation of the indebtedness under the second mortgage did not create a new mortgage (Suffolk County Federal Savings and Loan Association v. Bragalini, 5 N Y 2d 579). I am, therefore, of the opinion that the sixth indenture was not a mortgage for the purposes of Article 11 of the Tax Law, and accordingly, the mortgage recording tax should be refunded.

I am of the opinion, therefore, that a determination should be prepared refunding the mortgage recording tax. Please be advised that Commissioner Murphy has requested an expeditious review of this matter.

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Counsel

MS:ca  
Enc.

January 27, 1968

**STATE OF NEW YORK**  
**DEPARTMENT OF TAXATION AND FINANCE**  
**BEFORE THE STATE TAX COMMISSION**

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In the Matter of the Instrument executed by  
CHRYSLER PROPERTIES, INC.

to

CHEMICAL BANK NEW YORK  
TRUST COMPANY, TRUSTEE

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APPLICATION having been made by Chrysler Properties, Inc. verified on its behalf on March 8, 1965, by Alex DiLorease, Jr., its secretary, for review of the determination of the recording officer of New York County imposing a mortgage recording tax on an instrument entitled "sixth supplemental indenture" dated August 1, 1964, executed by Chrysler Properties, Inc. to Chemical Bank New York Trust Company, Trustee, recorded in the office of the recording officer of New York County on August 6, 1964, in Book 6305 of Mortgages, at page 241; and

APPLICATION having also been made for refund of Sixty-seven Thousand Five Hundred Dollars (\$67,500) paid said recording officer at recording of said instrument;

NOW THEREFORE, after hearing the attorney for the applicant, and after examination of the entire record and due consideration thereof, the State Tax Commission hereby finds:

(1) That an original indenture of mortgage was made on March 1, 1950 by W. P. Chrysler Corporation to Central Hanover Bank and Trust Company, trustee, for \$12,500,000 on the fee and

leasehold interest of parcels of property owned by the aforesaid W. P. Chrysler Corporation; that thereafter five supplemental indentures were entered between the trustee and successor owners of the fee and leasehold interests in accordance with the terms of the original indenture which provided for the issuance of such supplemental indentures, that all the necessary mortgage recording taxes were paid thereon; that further at the time of the execution of the instrument in question entitled "sixth supplemental indenture", the principal indebtedness on all the aforesaid five prior indentures was reduced to \$23,028,000.

(2) That between May 31, 1961 and December 7, 1962 four second mortgages were entered into by different owners of various interests in the premises upon which mortgages, mortgage taxes had been paid; that on May 19, 1964 Wellington Associates Inc., the then owner of the premises, entered into a consolidation agreement with Chase Manhattan Bank, the then holder of the various mortgages consolidating the aforesaid four mortgages, modifying the terms of payment therein and assuming the obligation of the consolidated mortgage; that the principal indebtedness of such consolidated mortgage had been reduced to the amount of \$13,500,000 at the time of the execution of the sixth supplemental indenture, the instrument under review; that no mortgage tax was required by the recording officer with respect to the recording of the consolidation agreement.

(3) That on July 30, 1964 various lenders executed a note purchase agreement to the Chemical Bank New York Trust Company, appointing the latter as their agent, for the purchase of the \$23,080,000 indebtedness outstanding on the original indentures, the \$13,500,000 indebtedness on the consolidated



second mortgage held by Chase Manhattan Bank and a new indebtedness of \$10,472,000 to be executed as a third mortgage by the owner of the premises; that the aforesaid Chemical Bank New York Trust Company was then the trustee as successor in interest to the Hanover Bank and Trust Company.

(4) That on August 1, 1964 Chrysler Properties, Inc. was the then owner of the premises; that on that date the consolidated second mortgage was assigned by Chase Manhattan Bank to Chemical New York Trust Company as trustee; that a third mortgage in the amount of \$10,472,000 was entered into between Chrysler Properties Inc. and Chemical Bank New York Trust Company, upon which third mortgage the mortgage tax has been paid.

(5) That on that date, the instrument in question, the sixth indenture, was executed by Chrysler Properties Inc. to Chemical Bank New York Trust Company consolidating all of the above mortgage, spreading the lien over properties covered by the mortgages, and providing for the issuance of certain notes in the amount of \$47,000,000, the sum total of the various amounts of indebtedness existing prior thereto.

(6) That the instrument in question provided that the outstanding amounts of indebtedness should not be distinguished or discharged and the notes were to be delivered in exchange for the outstanding bonds and mortgage notes.

(7) That the recording officer demanded the payment of a mortgage recording tax in the amount of \$67,500, the amount of refund requested, based on an indebtedness of \$13,500,000, the indebtedness due on the consolidated second mortgage notes, on the ground that such indebtedness had been extinguished and a new indebtedness in that amount created by the instrument under review.

Based upon all the foregoing facts, the State Tax Commission hereby

**DETERMINES:**

(A) That the issuance of new notes in exchange for the outstanding forms of indebtedness did not create any new or further indebtedness not previously existing.

(B) That no existing mortgage has been satisfied or discharged by the instrument in question.

(C) That said instrument was not subject to the mortgage recording tax imposed by Article 11 of the Tax Law.

(D) That the recording officer of New York County erroneously collected the sum of Sixty-seven Thousand Five Hundred Dollars (\$67,500) as mortgage recording tax thereon.

(E) That the determination of the recording officer be and the same hereby is cancelled and annulled, and it is hereby

**O R D E R E D**

(1) That the recording officer of New York County be, and he hereby is authorized and directed to deduct the sum of Sixty-seven Thousand Five Hundred Dollars (\$67,500) from mortgage tax moneys in his hands or which shall come to his hands and to refund said amount to Chrysler Properties, Inc.

(2) That two certified copies of this order be mailed to the recording officer of New York County, one of which he is directed to file with the records of his office and the other with the treasurer of the City of New York as a warrant for the disbursement.

DATED March 20, 1967

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

**President**

/s/

JAMES R. MACDUFF

**Commissioner**

/s/

WALTER MACLYN CONLON

**Commissioner**