

Wise on Determinations
BUREAU OF LAW

MEMORANDUM

Mortgage & Land Tax
A-Z
Columbia Pictures
Realty Corp.

TO: State Tax Commission
FROM: E. H. Best, Counsel
SUBJECT: COLUMBIA PICTURES REALTY CORPORATION

Petition for an order to review a determination of the City Register of the City of New York for the County of New York with respect to the imposition of, and to direct a refund of, Mortgage Recording Tax pursuant to Article 11 of the Tax Law

The issue involved in this matter is whether instruments executed by Columbia Pictures Realty Corporation, hereinafter referred to as "Realty", to Irving Trust Company, hereinafter referred to as "Irving", called "Second Supplemental Loan Agreement" and "Assignment", constituted an extension of an indebtedness owed under a previously recorded mortgage, or secured a new or further indebtedness.

Columbia Pictures Corporation, hereinafter referred to as "Columbia", the holder of a ground lease of premises known as 711 Fifth Avenue, New York, New York pledged its leasehold interest to Irving to secure repayment of its note of \$1,800,000 by mortgage dated January 4, 1957 which was recorded on January 7, 1957. The mortgage recording tax was paid on the recording.

On June 28, 1957 Columbia assigned its leasehold interest to Realty by an assignment recorded July 3, 1957. In turn Realty subleased space to Columbia under an occupancy lease. Agreements were also entered into on June 28, 1957 whereby Irving released Columbia from its liability under its note for \$1,800,000 and Realty assumed the liability for the payment of the obligation and became the sole obligor. Realty also assigned to Irving a portion of rents payable under the occupancy lease which were equal to the installment payments of principal and interest due under the note together with Realty's interest in the ground lease until the indebtedness is paid in full.

On January 31, 1958 Realty and Irving entered into a "First Supplemental Agreement" which provided that Irving would lend to Realty \$500,000 and that Realty would execute to Irving a new note

for \$2,300,000 and upon the execution of the new note the old note would be cancelled. To secure such indebtedness, Realty assigned the ground lease to Irving. The new assignment pursuant to the agreement was recorded on March 18, 1958 and a mortgage recording tax on the new indebtedness of \$500,000 was paid on the recording which was accepted by the recording officer. Realty also assigned to Irving the rents payable by Columbia under the occupancy lease.

By September 29, 1961 the indebtedness under the new note was reduced to \$1,160,000. On that date Realty and Irving entered an agreement called "Second Supplemental Loan Agreement" under the terms of which Irving agreed to advance Realty an additional \$1,640,000. The agreement provided that on receipt of the advance Realty would deliver to Irving a new note for \$2,800,000 and Irving would thereupon cancel the note for \$2,300,000. As security for the indebtedness Realty again assigned its interest in the ground lease and the rents receivable from Columbia under the occupancy lease. On October 2, 1961 the assignment executed in connection with the additional loan of \$1,640,000 and a copy of the "Second Supplemental Loan Agreement" together with an affidavit claiming an exemption of mortgage tax was delivered to the Register of the City of New York. A check for \$8,200 in payment of the mortgage recording tax was tendered and a request was made that the assignment be recorded. The Register of the City of New York refused to accept the documents and the check and asserted that a mortgage tax of \$14,000 based upon the \$2,800,000 rather than \$8,200 based upon the \$1,640,000 was payable.

On December 5, 1961 the assignment was recorded and a mortgage recording tax of \$14,000 was paid to the Register of the City of New York under protest.

The application of the petitioner herein is for refund of \$5,800, the amount of mortgage tax computed upon \$1,160,000, which was paid to the Register on December 5, 1961.

The Register of the City of New York contends that the aggregate sum of \$2,800,000 constitutes a new, independent and distinct obligation to Realty to Irving arguing that no tax benefit arises by reason of the fact that a mortgage tax was originally paid on the recording on the original pledge of the ground lease given by Columbia to secure the indebtedness of \$1,800,000. He further argues that no tax exemption was claimed for the sum of \$500,000 advanced by Irving to Realty on which the mortgage recording tax was paid.

The hearing officer is of the opinion that the "Second Supplemental Agreement" and the "Assignment" constitute an extension of indebtedness which Realty owed to Irving under the previously recorded mortgage to the extent of \$1,160,000 and securities new or further indebted to the extent of \$1,640,000.

The Court of Appeals in Matter of Suffolk County Federal Savings and Loan Associations v. Bragalini, 5 N Y 2d 579 held that an extension of a mortgage is not to be considered a new mortgage because it substituted a new obligor for the old obligor. Accordingly, when Realty was substituted for Columbia as the obligor of the \$1,800,000 debt on June 28, 1957 no new debt or obligation was created and a recording of the assignment of the ground lease from Realty to Columbia on July 3, 1957 was not subject to mortgage recording tax.

In Metropolitan Press Co. v. State Tax Commissioners, 172 A. D. 653 revd. on other ground 220 N. Y. 344 it was held that the requirements as to the filing of a statement on which an exemption is claimed is directory only and if the recording officer allows an exemption of mortgage recording tax and if tax is subsequently sought to be imposed upon the sole ground that a verified statement was not filed, the mortgagee is entitled to file it nunc pro tunc. The Register of the City of New York allowed an exemption from tax on the filing of the assignment of the ground lease which secured the indebtedness of \$2,300,000 as provided for in the "First Supplemental Loan Agreement" and cannot now claim that no exemption should be allowed here because the mortgage increases the obligation of a prior mortgage on which a tax exemption might have been improperly allowed.

Section 250 of the Tax Law provides:

"* * * 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."

Here the verified petition of Realty in this matter contains facts on which an exemption from tax on the recording of the assignment can be based.

Accordingly, I am in agreement with the hearing officer's recommendation that mortgage recording tax of \$5,800 be ordered refunded to the petitioner.

/s/

E. H. BEST

Counsel

May 15, 1968
FVD:lb/nn

5-17-68

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

Case No.

_____ :
In the Matter of the Instrument executed by :

COLUMBIA PICTURES REALTY CORPORATION :

to :

IRVING TRUST COMPANY :

ORDER

_____ :
A PETITION having been filed by Columbia Pictures Realty Corpora-
tion, (hereinafter called Realty) for review of the determination of the
recording officer of New York County imposing mortgage recording tax in the
sum of \$14,000 upon the instrument in the form of an assignment, dated
September 29, 1961, executed by Realty to Irving Trust Company, which
instrument was recorded in the office of said recording officer on December 5,
1961, in Book 6016 of Mortgages, Page 57, and

APPLICATION having also been made for refund of \$5,800, part of
the mortgage recording tax of \$14,000 paid to said recording officer at
recording of said instrument;

AND HEARING having been held before Samuel Lorvan, Hearing Officer,
designated as such by this Commission, on November 12, 1963 at the office
of the State Tax Commission at the State Office Building, 80 Centre Street,
New York, New York, and the applicant having appeared by its attorneys,
Schwartz & Frohlich, Esqs., Stuart G. Schwartz, Esq. and Mortimer N. Felsinger,
Esq., of counsel; and a report having been made by said Hearing Officer

NOW THEREFORE after examination of the record, the proof and various
documents submitted in the proceeding and the report of the Hearing Officer,
and after due deliberation, it is

DETERMINED BY THE COMMISSION

1. The report of the Hearing Officer dated February 19, 1968

be and the same hereby is adopted.

2. The instruments dated September 29, 1961, executed by Realty with Irving, called "Second Supplemental Loan Agreement" and "Assignment" together constitute an extension of indebtedness of Realty owed to Irving under a previously recorded mortgage to the extent of \$1,160,000 and secure new or further indebtedness to the extent only of \$1,640,000.

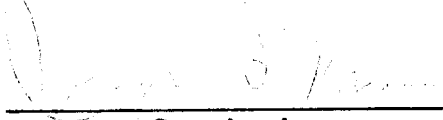
3. The recording of New York County erroneously collected mortgage recording to the extent of \$5,800 computed upon said amount of \$1,160,000.

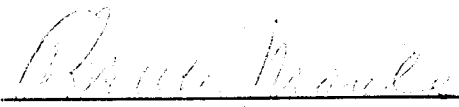
4. That G. Michael Morris, Register of the City of New York, recording officer of the County of New York be, and he hereby is authorized and directed to deduct the sum of \$5,800 from mortgage tax moneys in his hands or which shall come to his hands and to refund said amount to Columbia Pictures Realty Corporation.

5. That two certified copies of this order be mailed to the recording officer, 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 May 28, 1968

STATE TAX COMMISSION


Commissioner


Commissioner


Commissioner