

## BUREAU OF LAW

## MEMORANDUM

TO: Commissioners Murphy and Macduff

FROM: E. H. Best, Counsel

SUBJECT: 32 East 72nd Street, Inc.  
Mortgage Recording Tax  
Article 11

The question raised herein is whether or not a mortgage in the principal indebtedness of \$250,000 was a supplemental mortgage in accordance with section 255 of the Tax Law.

The facts herein, more fully set forth in the memorandum by Mr. Lorvan dated December 4, 1961, and in the letter from the New York City Register to the State Tax Commission dated October 16, 1961, and in the proposed determination disclosing that Volney Hotel Corporation, as mortgagor, originally executed a mortgage to 32 East 72nd Street, Inc., the mortgagee applicant, in the sum of \$1,050,000. Underlying such mortgage was a mortgage note which provided for the creation of a senior interest and junior interest in the original mortgage indebtedness. Pursuant to the terms of such note the mortgagee applicant assigned the mortgage in the reduced amount of \$800,000, giving an estoppel certificate certifying to the reduced amount. A mortgage for the balance of \$250,000 was then executed by Volney Hotel Corporation to 32 East 72nd Street, Inc. Upon recording, a mortgage recording tax of \$1,250 was demanded and paid. The applicant, however, filed affidavits with the recording officer alleging that this mortgage was not a new mortgage, but a supplemental mortgage in accordance with the provisions of section 255 of the Tax Law.

I am of the opinion that the mortgage of \$250,000 was not a new mortgage upon which a mortgage recording tax could be imposed. It is clear that no further additional principal indebtedness was created since the amount of \$800,000 as set forth in the assignment and the amount of \$250,000 in the supplemental mortgage total the amount of the original indebtedness. Furthermore, the supplemental mortgage was executed by and between the parties to the original mortgage agreement.

I am accordingly preparing a proposed determination granting a refund for the mortgage recording tax. If you agree, kindly sign the same and return, together with the file, to the Law Bureau for further processing.

November 22, 1966

MS:cp  
Enc.

/s/

E. H. BEST

Counsel

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION OF  
32 EAST 72ND STREET, INC.

FOR REFUND OF MORTGAGE RECORDING TAX  
UNDER ARTICLE 11 OF THE TAX LAW

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A hearing having been held pursuant to section 251 of the Tax Law in the office of the State Tax Commission, 80 Centre Street, New York, New York, on May 11, 1962, before Thomas P. McGrath, hearing officer for the Department of Taxation and Finance, to ascertain whether or not a mortgage recording tax was erroneously collected by the recording officer of New York County on the recording of a mortgage executed by Volney Hotel Corporation to 32 East 72nd Street, Inc., the mortgagee, and recorded on April 4, 1961, by the recording officer of New York County, in Liber 9961 of Mortgages at Page 332; the applicant having appeared at the hearing and having been represented by its attorneys, Goldwater & Flynn, Esqs., and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That on February 28, 1961, the applicant, 32 East 72nd Street, Inc., sold to Volney Hotel Corporation certain premises owned by it and located in the City, County and State of New York; that as part of the purchase price the purchaser executed and delivered to the applicant a purchase money mortgage in the amount of \$1,050,000, which mortgage was duly recorded in the office of the Register of the City of New York

for the County of New York on March 3, 1961, in Liber 7974 of Mortgages at Page 375; that the mortgage was given to secure an unrecorded mortgage note which provided that the owner of the note

" \* \* \* shall have the right at any time to assign a senior interest in the principal sum payable hereunder and retain a junior interest therein for the unassigned portion thereof. The payee or any subsequent owner of the within note, shall have the right to have the within note reduced to an amount which it may elect, and the maker agrees that in the event of such election, the maker hereof shall execute and deliver to the owner of the within note or any subsequent holder thereof a note for the difference between the then unpaid principal due hereunder and the reduced amount of the within note and shall execute a mortgage securing the same, (hereinafter referred to as the 'Junior note and mortgage') \* \* \* ."

(2) That on March 28, 1961, the aforesaid mortgage was assigned by 32 East 72nd Street, Inc., the mortgagee applicant herein, to Aetna Life Insurance Company; that said assignment provided that it was given in consideration of \$800,000, and that said mortgage was reduced immediately prior to the date of assignment to said sum and interest; that simultaneous with the execution of the assignment the applicant herein by its vice president executed a certificate certifying that there was now owing and unpaid on the aforesaid mortgage originally in the amount of \$1,050,000, the principal sum of \$800,000 with interest thereon; that further executed simultaneous with such assignment was a modifying agreement dated March 28, 1961, between Aetna Life Insurance Company, as mortgagee, and Volney Hotel Corporation, as mortgagor, which modification agreement, recorded in the New York County Register's office, in Liber 7961 of Mortgages at Page 309, provided in part, that there was now outstanding and unpaid on the said note and said mortgage the principal sum of \$800,000 and further provided for the payment of such amount only.

(3) That simultaneous with the execution of such assignment of mortgage, Volney Hotel Corporation executed a mortgage to the applicant herein in the principal sum of \$250,000, which mortgage was recorded on April 4, 1961, in the office of the New York County Register, in Liber 9961 of Mortgages at Page 332 and a mortgage recording tax of \$1,250 was paid by the applicant at recordation; that at the time of the recording of the mortgage, an affidavit was delivered to the recording officer reciting that an exemption from mortgage tax should be granted pursuant to section 255 of the Tax Law, which aforesaid section grants exemption for supplemental mortgages; that the recorded mortgage provided that it was subject and subordinate to the prior mortgage in the principal sum of \$1,050,000 which has been assigned in the reduced sum of \$800,000.

Upon the foregoing and all the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

(A) That the mortgage in the amount of \$250,000 executed by Volney Hotel Corporation as mortgagor to 32 East 72nd Street, Inc., the mortgagee applicant herein, which mortgage was recorded by the recording officer of New York County in Liber 9961 of Mortgages at Page 332 did not create any additional and further principal indebtedness and is not taxable under Article 11 of the Tax Law.

(B) That the recording officer of New York County erroneously collected the sum of One thousand two hundred fifty dollars (\$1,250), as mortgage recording tax thereon.

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

**ORDERED**

(1) That the recording officer of New York County be, and hereby is authorized and directed to deduct the sum of One thousand two hundred fifty dollars (\$1,250) from mortgage tax moneys in his hands or which shall come to his hands and to refund said amount to 32 East 72nd Street, 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: Albany, New York, this 4th day of January , 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER

December 28, 1966

Monroe Goldwater, Esq.  
Goldwater & Flynn  
50 East 42nd Street  
New York, New York 10017

Re: 32 East 72nd Street, Inc.  
Refund of Mortgage Tax

Dear Mr. Goldwater:

This is in reply to your letter of October 20, 1966 with respect to the delay in issuance of the determination of this matter. Essentially the matter involves a close question of the law which has just recently been resolved. A proposed determination has accordingly been prepared and submitted to the Commission for review. A decision in this matter should be issued shortly.

Sincerely yours,

JOSEPH H. MURPHY  
Commissioner

MS:ca

Approved: EHB