

*Misc. Tax Bureau,  
Mortgage Tax Return  
A-2  
Trombly, Francis H.  
1965*

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION OF  
FRANCIS H. TROMBLY  
FOR PARTIAL REFUND OF MORTGAGE RE-  
CORDING TAX PURSUANT TO ARTICLE 11  
OF THE TAX LAW  
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A hearing having been held pursuant to the provisions of Section 251 of the Tax Law in the office of the State Tax Commission at the Alfred E. Smith State Office Building, Albany, New York, on May 14, 1963, before Martin Schapiro, hearing officer, to ascertain whether or not a mortgage recording tax was erroneously collected by the recording officer of Saratoga County on the recordation of a mortgage executed by M.S.C. Realty Corporation, mortgagor, to National Commercial Bank and Trust Company, mortgagee, and recorded on July 22, 1960, in the office of the Clerk of Saratoga County in Book 472, Page 525 of Mortgages; and the applicant having appeared at the hearing in person and having been represented by John W. Manning, Esq., and the record having been duly examined and considered, the State Tax Commission hereby finds:

(1) On and before July 22, 1960, M.S.C. Realty Corporation was the owner of certain real property located in Saratoga County in the State of New York, which property was encumbered by four mortgages executed by said corporation to mortgagees other than the National Commercial Bank and Trust Company of Albany and the aggregate principal sum secured thereby was \$24,316.52.

(2) On said date, said four mortgages were assigned to National Commercial Bank and Trust Company, which paid the said

principal sum to the prior holders thereof.

(3) On the same date, M.S.C. Realty Corporation executed and delivered to National Commercial Bank and Trust Company, to secure an additional loan of \$25,683.48, the following instruments:

(a) its note in that amount;

(b) the certificate of its President and Secretary that the holders of not less than two-thirds of its voting stock had duly consented to a mortgage on said property in the amount of \$25,683.48, securing said note;

(c) a mortgage on said property reciting that it secured an indebtedness in the principal sum of \$50,000 "according to a certain bond, note or obligation bearing even date herewith"; and

(d) a consolidation and extension agreement, reciting the execution of a mortgage on the same date "to secure payment of the principal sum of \$25,683.48". This agreement consolidated said mortgage and the four prior mortgages into a single lien for \$50,000 (the total of the principal sums secured by all said mortgages) and modified the terms of the four prior mortgages as to interest rate and maturity.

(4) Said certificate of stockholders' consent, mortgage and the consolidation and extension agreement were filed and recorded simultaneously in the office of the Saratoga County Clerk on July 22, 1960.

(5) Upon recording said mortgage, the Saratoga County Clerk collected mortgage tax in the sum of \$250, computed upon

the principal sum of \$50,000, and said tax was paid by the applicant herein, Francis H. Trombly, attorney for the mortgagee, and no part thereof has been paid to him by said County Clerk or by any other party to said instruments.

(6) The recital in said mortgage as to the principal amount of indebtedness secured thereby (\$50,000) was a clerical or typographical error.

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

**D E T E R M I N E S:**

(A) The principal indebtedness intended to be secured and actually secured by said mortgage recorded on July 22, 1960, was \$25,683.48, the amount stated in the three other instruments mentioned in finding No. 3 above.

(B) The amount of mortgage tax properly payable upon the recording of said mortgage was \$128.50 and the balance of \$121.50 collected by the Saratoga County Clerk upon the recording thereof was erroneously collected.

(C) The Clerk of Saratoga County is hereby authorized and directed to deduct the sum of \$121.50 from mortgage tax monies in his hands or which shall come to his hands and to refund the said amount to Francis H. Trombly, the applicant herein, and to charge back the said amount to the tax district which has been credited with the same in accordance with Section 263 of the Tax Law, and it is so ORDERED.

Dated: Albany, New York, this 19th day of May, 1965.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY  
**President**

/s/

IRA J. PALESTIN  
**Commissioner**

/s/

JAMES R. MACDUFF  
**Commissioner**

## BUREAU OF LAW

## MEMORANDUM

TO: Commissioner Palestin

FROM: Mr. Kelliher

SUBJECT: FRANCIS H. TROMBLY  
Mortgage Recording Tax

This is an application for refund of mortgage tax. Sometime ago a proposed determination was submitted to the Tax Commission which would grant the refund. Attached is a copy of Mr. Best's memorandum of transmittal in which the facts are fully detailed.

Thereafter you sent the file back to Mr. Schapiro with a memorandum objecting to the proposed determination on two grounds: (1) that if this was a supplemental mortgage, no statement was filed as required by section 255; and (2) if it was not a supplemental mortgage, there is nothing on record in the County Clerk's office to show that the statement in the mortgage as to the amount secured is erroneous, as urged by the refund applicant.

It seems quite clear that this was not a supplemental mortgage as defined in section 255. It does not correct the earlier mortgages, it was not made pursuant to any provisions contained in them, and it did not extend their lien to any other property as security for the same debt.

With reference to your second objection, the other instruments recorded simultaneously with the mortgage show quite clearly that the amount which it secures was only \$25,683.48, not \$50,000. One of these instruments is the certificate of stockholders' consent which shows that a mortgage of only the lesser amount was consented to. The other instrument is the consolidation and extension agreement which recites that the new mortgage was given to secure an indebtedness in the lesser amount, and that \$50,000 is the aggregate amount due on the new mortgage plus the old mortgages. Copies of these instruments were introduced in evidence at the hearing and are attached hereto.

In view of these factors, I would ask that you reconsider this matter. If you have any doubts about it please let me discuss it with you.

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Assistant Director

April 12, 1965  
FK:EB

Enc.

**Francis M. Trombley**  
**Mortgage Recording Tax**

This case was submitted to me on October 9, 1963. I read the file and then discussed the case with Mr. Schapiro who took the hearing and prepared the determination.

Law Bureau recommends that the application for mortgage recording tax be granted. Taxpayer-owner had issued four mortgages to various holders. They totaled some \$24,000. National Commercial Bank and Trust Company funded these mortgages by paying off the several lienors, taking an assignment of the mortgages and advanced approximately an additional \$26,000. The total mortgage indebtedness now owing to National Commercial as mortgagee was some \$52,000. This was evidenced by a consolidation and extension of the first four mortgages and a separate mortgage covering the supplemental advance. The amount inscribed in the separate mortgage was (mistakenly) stated at \$50,000. The application is made for refund of the recording tax on approximately \$26,000. Law Bureau proposes on this statement of facts that the application for refund be granted.

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A question the proposed relief on the ground that there is nothing on record in the recording office to show the commission of an error. Extending relief in these circumstances would give us a Tax Department record of a \$50,000 mortgage upon which a recording tax has been paid on an indebtedness of some \$26,000. Nothing would appear in the record of the recording officer, whether by corrected mortgage, estoppel certificate, etc., to show the commission of error. The only source upon which relief could be granted would be matters in the file of this case in the Tax Department, a perishable document.

In my view, the official recording office should contain the source or at least a reference to an identifiable source for a lessening of the prima facie recording tax.

I have discussed this with Mr. Schapiro and have requested that the record herein be amended to conform to the procedure here indicated.

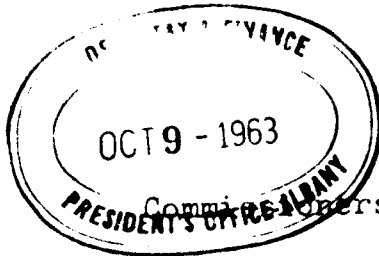
  
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Ira. J. Palestin

October 23, 1963



## BUREAU OF LAW

## MEMORANDUM



TO: Commissioners Murphy, Palestin and Macduff

FROM: E. H. Best, Counsel

SUBJECT: FRANCIS H. TROMBLY  
Mortgage Recording Tax

The facts more specifically set forth in the proposed determination disclose that the National Commercial Bank and Trust Company, the mortgagee, made a new mortgage loan in the sum of \$25,683.48 to M.S.C. Realty Corporation, the mortgagor. This amount of principal indebtedness is recited in a (1) note underlying the mortgage, (2) the certificate of consent of the officers of the mortgagor corporation and (3) a consolidation and extension agreement all executed by the mortgagor to the mortgagee, the latter two instruments being recorded simultaneously with the mortgage. The mortgage, however, recites a principal indebtedness of \$50,000, which was clearly a clerical or typographical error. Said mortgage was recorded and a tax of \$250 paid upon such erroneously recited indebtedness.

The hearing officer is of the opinion, in which I concur, that since the refund application is not based upon the theory that this was a supplemental mortgage there is no need for a verified statement mentioned in Section 255 of the Tax Law. The mortgage could not possibly secure more than \$25,683.48 and could not be enforced for more than this amount.

Accordingly, I approve the proposed determination that taxes based upon a principal indebtedness in excess of \$25,683.48 were erroneously collected by the recording officer. Commissioner Rowley concurs.

Kindly return the file after disposition.

E. H. Best  
Counsel

MS:rlp  
Enclosure  
October 2, 1963