

See 1970 Folder  
for Two Orders Opening  
Accounts

*Misc. Tax Determinations  
Mortgage & Land Tax A-Z  
Verdant Properties, Inc.*

Mr. E. H. Best, Counsel  
(Attention Mr. James Scott)  
Mr. Edward Rook

Mortgage Recording Tax:  
(a) Verdant Properties, Inc.  
(b) Verdant Second Supplemental

Transmitted herewith are Orders on Default signed by the State Tax Commission in apportionment proceedings pursuant to Section 260 of the Tax Law, relative to the amount secured under the mortgage dated August 1, 1966; and also to the amount secured under the "Second Supplemental Indenture" dated July 1, 1967, both instruments executed by Verdant Properties, Inc. to Mellon National Bank & Trust Company and D. A. Hazlett, Trustees.

EDWARD ROOK  
Secretary to the  
State Tax Commission

April 23, 1969

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**BUREAU OF LAW  
MEMORANDUM**

TO: Mr. Edward Rook

FROM: E. H. Best, Counsel

SUBJECT: Transfer of Mortgage Recording Tax File  
VERDANT PROPERTIES, INC.

MAR 25 1969

I am forwarding herewith mortgage recording tax file in the above matter in which Samuel Lorvan has prepared a proposed order.

After the order has been signed by the Tax Commission please forward signed copies thereof to this office for publication. Please forward a signed copy thereof to this office for publication in the Tax Bulletin and forward the file to the Miscellaneous Tax Bureau, Mr. Arthur Maxwell for processing, including the mailing of the order.

*E. H. Best*

Counsel

MS:ldd  
Enc.  
March 25, 1969

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

Case No.

\_\_\_\_\_ :  
In the Matter of the Mortgage executed by

VERDANT PROPERTIES, INC. :

to :

MELLON NATIONAL BANK & TRUST COMPANY  
and D. A. HAZLETT, TRUSTEES \_\_\_\_\_ :

ORDER  
ON  
DEFAULT

A. A mortgage dated August 1, 1966, executed by Verdant Properties, Inc. to Mellon National Bank & Trust Company and D. A. Hazlett, Trustees, covering real property within and without the State of New York was first recorded in this State in the office of the recording officer of Erie County on December 2, 1966.

B. The mortgage recites that it is given to secure payment of:

- a. Secured Notes, Series A, in an aggregate principal amount not in excess of \$1,300,000.
- b. Secured Notes, Series B, in an aggregate principal amount not in excess of \$1,250,000.
- c. Various series of Improvement Notes in an aggregate amount at any one time of not less than \$175,000 for the purpose of financing additional improvements to any of the properties.

C. Each of the Secured Notes, Series A, contains the following recitation--similar notation appears in the Secured Notes, Series B--

"This Note is one of a class of Notes of the Company known as its 5.60 per cent Secured Notes, Series A, limited to an aggregate principal amount of \$1,300,000 issued and to be

issued, under and pursuant to the Indenture and which are and are to be equally and ratably secured by the Indenture with the Company's 5.875 Secured Notes, Series B, and various series of Improvement Notes of the Company described in the Indenture which may be issued from time to time."

D. Section 257 of the Tax Law provides that mortgage recording tax due upon each mortgage of real property is payable at recording. Section 253 provides, in part, that such tax shall be computed upon "the principal debt or obligation, which is, or under any Contingency may be secured at the date of execution thereof or at any time thereafter by a mortgage\*\*\*." Section 256 provides, in part,

"If the principal indebtedness secured or which by any contingency may be secured by a mortgage is not determinable from the terms of the mortgage\*\*\*and the maximum amount secured or which by any contingency may be secured by the mortgage is not expressed therein, such mortgage shall be taxable under Section 253 of this chapter upon the value of the property covered by the mortgage\*\*\*unless at the time of presenting such mortgage for record the owner thereof shall file with the recording officer a sworn statement of the maximum amount secured or which under any contingency may be secured by the mortgage.\*\*\*"

Section 260, second paragraph, provides, in part, where the real property covered by a mortgage is located partly within and without the State and such mortgage is presented for record before the Tax Commission makes its determination of the taxable portion, there may be presented to the record-

ing officer a statement verified by the mortgagor in which shall be specified the net value of the property within the State and the net value of the property without the State covered by the mortgage and that the tax payable before the Commission's determination shall be computed upon such portion of the principal indebtedness secured by the mortgage as the net value of the mortgaged property within the State bears to the net value of the entire mortgaged property.

Applying the statutory provisions to said mortgage dated August 1, 1966, the principal indebtedness secured by the mortgage at the date of its execution or which may be secured thereby at any time thereafter is not determinable from the terms of the mortgage, but is not less than \$2,725,000 (\$1,300,000; \$1,250,000; \$175,000). Mortgage recording tax was due at recording computed upon the value of the property covered by the mortgage (but not less than \$2,725,000).

The recording officer of Erie County, pursuant to Section 256, has determined the value of the property covered by the mortgage to be not less than \$2,725,000.

E. Determination by the Tax Commission of the taxable portion was not requested prior to recording the mortgage in this State. A statement of relative values within and without the State, recited to be made pursuant to Section 260 of the Tax Law, sworn to November 30, 1966, by Arthur William Rashap, the mortgagor's vice president, was filed at recording. In said statement, it is recited that the value of the property covered by the mortgage located in the State of New York is \$475,000; that the value of the property without the State is \$1,630,145; the proportion of the net value of property in the State of New York to the total net value of all property covered is 22.57 per cent; that the amount of Secured Notes then issued and outstanding was \$2,050,000; that 22.57 per cent of \$2,050,000 is \$463,000; and \$2,315 was deposited with the recording officer at recording of the mortgage. Statement was received from the recording officer of Erie County on December 5, 1966.

This deposit was insufficient because it does not represent the "portion of the principal indebtedness secured by the mortgage" but only a part thereof since the principal indebtedness secured by the mortgage exceeded \$2,050,000.

F. The statement by the owner of a mortgage reciting the maximum amount of principal indebtedness secured by a mortgage securing an indeterminate amount, which statement is thereafter binding and conclusive against said owner and his assignees, may be filed at recording. No statement by the owner of the mortgage was filed at recording of the mortgage dated August 1, 1966.

The parties were notified that such statement of maximum amount of principal indebtedness secured by the mortgage under any contingency would be accepted in the proceeding. The owners of the mortgage have not filed such statement to date. Statements by the owners of the mortgage were offered, and returned, in which said owner did not state a maximum amount of principal indebtedness secured by the mortgage, which would thereafter be binding and conclusive, but instead contradicted express recitations in the mortgage to the effect that it secures Improvement Notes.

G. Notice of hearing pursuant to said Section 260 to the State Comptroller; Verdant Properties, Inc., mortgagor; Mellon National Bank & Trust Company and D. A. Hazlett, Trustees, mortgagees; and Cravath, Swaine & Moore, Esqs., attorneys for the mortgagor, was given by mail April 18, 1968, fixing May 7, 1968, at ten o'clock in the forenoon, at the office of the State Tax Commission, Miscellaneous Tax Bureau, Mortgage & Land Tax Section, Room 101 in Building Number Eight, the State Campus, Albany, N. Y., as the time and place for hearing.

H. At said time set for hearing, all parties and those given notice of said hearing, defaulted in appearance and attendance. V. Robert Kiffney, Esq., representing Continental Can Company, Inc., attended but offered no proof.

I. As the result of the non-appearance of the parties, and witnesses on their behalf, at the time and place set for hearing, the said parties have, by their default rendered it not possible for the Tax Commission to proceed to ascertain and determine the relative net values within and without this State of the property covered by the mortgage; and accordingly are deemed to have waived any claim of right to such determination.

NOW THEREFORE, after due consideration, it is  
DETERMINED BY THE COMMISSION

(1) That the mortgage dated August 1, 1966, executed by Verdant Properties, Inc. to Mellon National Bank & Trust Company and D. A. Hazlett, Trustees, first recorded in this State in the office of the recording officer of Erie County on December 2, 1966, secures principal indebtedness exceeding Two Million Seven Hundred Twenty-five Thousand Dollars, (\$2,725,000).

(2) That mortgage recording tax of Thirteen Thousand Six Hundred Twenty-five Dollars, (\$13,625), was due and payable thereon at recording.

(3) That mortgage recording tax of Two Thousand Three Hundred Fifteen Dollars, (\$2,315), was deposited at recording.

(4) That the balance of mortgage recording tax in the sum of Eleven Thousand Three Hundred Ten Dollars, (\$11,310), was due and unpaid at recording.

(5) That additional tax computed upon said unpaid amount of \$11,310 is due pursuant to Section 258 from the date of record of the mortgage to the date of payment.

(6) That mortgage recording tax will be due upon the mortgage when the aggregate amount of Improvement Notes issued exceeds the sum of \$175,000; computed upon such excess amount.

(7) That the real property covered by the mortgage located within the State of New York is situated in the County of Erie, Town of North Collins.

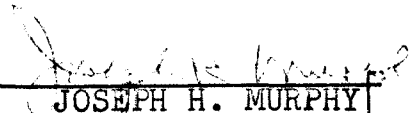
(8) That the recording officer of Erie County shall enter this mortgage and give it a serial number on his mortgage tax record book and

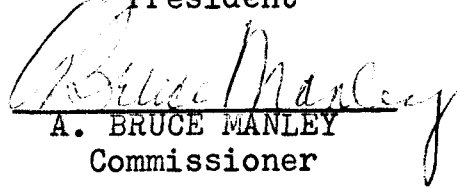


credit to the County of Erie, Town of North Collins, the entire tax collected at recording, the balance of tax and the additional tax due.

ADOPTED April 22, 1969

STATE TAX COMMISSION

  
\_\_\_\_\_  
JOSEPH H. MURPHY  
President

  
\_\_\_\_\_  
A. BRUCE MANLEY  
Commissioner

  
\_\_\_\_\_  
MILTON KOERNER  
Commissioner

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

Case No.

\_\_\_\_\_ :  
 In the Matter of the Mortgage executed by

VERDANT PROPERTIES, INC. :

to :

MELLON NATIONAL BANK & TRUST COMPANY  
 and D. A. HAZLETT, TRUSTEES \_\_\_\_\_ :

ORDER  
ON  
DEFAULT

A. (1) A mortgage dated August 1, 1966, executed by Verdant Properties, Inc. to Mellon National Bank & Trust Company and D. A. Hazlett, Trustees, covering real property within and without the State of New York was first recorded in this State in the office of the recording officer of Erie County on December 2, 1966.

(2) The mortgage recites that it is given to secure payment of:

- a. Secured Notes, Series A, in an aggregate principal amount not in excess of \$1,300,000.
- b. Secured Notes, Series B, in an aggregate principal amount not in excess of \$1,250,000.
- c. Various series of Improvement Notes in an aggregate amount at any one time of not less than \$175,000 for the purpose of financing additional improvements to any of the properties.

(3) The mortgage, accordingly, secures principal indebtedness of not less than \$2,725,000 within the meaning of Section 253 of the Tax Law.

(4) A statement of relative values within and without the State sworn to November 30, 1966, by Arthur William Rashop, the mortgagor's vice president, filed at recording; recites that the amount of principal indebted-

ness secured thereby is \$2,050,000 and tax was deposited based on that amount. The deposit was obviously insufficient since the principal indebtedness secured exceeded that amount.

B. (1) A mortgage called "Second Supplemental Indenture" dated July 1, 1967, executed by Verdant Properties, Inc. to Mellon National Bank & Trust Company and D. A. Hazlett, covering property within and without the State, recited to be supplemental to the mortgage between the parties, dated August 1, 1966, was recorded in the office of the clerk of Erie County on July 26, 1967.

(2) The mortgage recites it secures additional Series B Bonds in the aggregate principal sum of \$375,000; not previously secured under the earlier mortgage.

(3) At recording of such mortgage dated July 1, 1967, a statement was filed with the recording officer, which statement was sworn to July 21, 1967, by Kenneth G. Walker, the mortgagor's president and recites, in part:

"The Indenture (dated August 1, 1966) as supplemented by said Supplemental Indenture (dated February 20, 1967) is being further supplemented by said Second Supplemental Indenture for the purpose of authorizing issuance of the New Notes and to provide that the New Notes shall be secured by the Indenture as supplemented by said Supplemental Indenture and said Second Supplemental Indenture."

Exemption from mortgage recording tax was requested pursuant to Section 255 of the Tax Law.

The recording officer recorded said mortgage without payment of mortgage recording tax thereon.

(4) Section 255 of the Tax Law provides, in part:

"If subsequent to the recording of a mortgage

"on which all taxes, if any, accrued under this article have been paid, a supplemental instrument or mortgage is recorded\*\*\*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 \*\*\*."

The provisions of Section 255 do not apply because all mortgage recording taxes which had accrued on the mortgage dated August 1, 1966, had not been deposited at recording thereof or thereafter up to the date of record of the Second Supplemental Indenture. The principal amount secured by said indenture, computed as provided in Section 253, exceeded \$2,725,000 at recording; and partial tax was deposited computed upon principal amount of \$2,050,000 only. Even if said provisions did otherwise apply, the new or further indebtedness of \$375,000 secured is taxable under express terms in the statute.

(5) Determination by the Tax Commission of the taxable portion was not requested prior to recording the mortgage in this State. No statement of relative values within and without the State, recited to be made pursuant to Section 260 of the Tax Law, was filed at recording.

(6) Notice of hearing pursuant to said Section 260 to the State Comptroller; Verdant Properties, Inc., mortgagor; Mellon National Bank & Trust Company and D. A. Hazlett, Trustees, mortgagees; and Cravath, Swaine & Moore, Esqs., attorneys for the mortgagor, was given by mail April 18, 1968, fixing May 7, 1968, at ten o'clock in the forenoon, at the office of the State

Tax Commission, Miscellaneous Tax Bureau, Mortgage & Land Tax Section, Room 101 in Building Number Eight, The State Campus, Albany, N. Y., as the time and place for hearing.

(7) At said time set for hearing, all parties and those given notice of said hearing, defaulted in appearance and attendance. V. Robert Kiffney, Esq., representing Continental Can Company, Inc., attended but offered no proof.

(8) As the result of the non-appearance of the parties, and witnesses on their behalf, at the time and place set for hearing, the said parties have, by their default rendered it not possible for the Tax Commission to proceed to ascertain and determine the relative net values within and without this State of the property covered by the mortgage; and accordingly are deemed to have waived any claim of right to such determination.

NOW THEREFORE, after due consideration, it is  
DETERMINED BY THE COMMISSION

(1) That the mortgage called "Second Supplemental Indenture", dated July 1, 1967, executed by Verdant Properties, Inc. to Mellon National Bank & Trust Company and D. A. Hazlett, Trustees, first recorded in this State in the office of the recording officer of Erie County on July 26, 1967, secures additional principal indebtedness in the sum of Three Hundred Seventy-five Thousand Dollars, (\$375,000).

(2) That mortgage recording tax of One Thousand Eight Hundred Seventy-five Dollars, (\$1,875), was due and payable thereon at recording.

(3) That no mortgage recording tax was deposited at recording.


(4) That additional tax computed upon said unpaid amount of \$1,875 is due pursuant to Section 258 from the date of record of the mortgage to the date of payment.

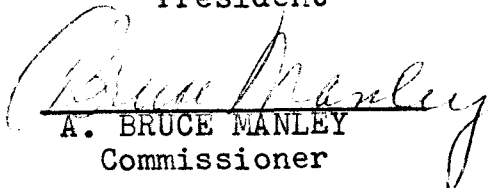
(5) That the real property covered by the mortgage located within the State of New York is situated in the County of Erie, Town of North Collins.

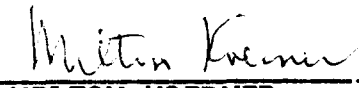
(6) That the recording officer of Erie County shall enter this mortgage and give it a serial number on his mortgage tax record book and credit the entire tax to the County of Erie, Town of North Collins.

ADOPTED April 22, 1969

STATE TAX COMMISSION

  
JOSEPH H. MURPHY  
President

  
A. BRUCE MANLEY  
Commissioner

  
MILTON KOERNER  
Commissioner