

Mr. Rook:

Mr. Newman tells me he discussed this case with you and desires you to look it over before submission to the Tax Commission.

5/26/69

GEP
A handwritten signature in dark ink, consisting of a large, stylized 'C' or 'G' followed by a series of loops and a long horizontal stroke extending to the right.

Misc. Tax Determin.

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

*Mortgage Tax A-2
Sheraton Corp. of America*

TO: Mr. Edward Rook
FROM: Lawrence A. Newman
SUBJECT: Sheraton Corporation of America
Article 11 Mortgage Tax
Decision

DATE May 20, 1969
OFFICE Hearing Unit

This hearing held by Mr. Samuel Lorvan in April 1968 involves an interpretation of Section 255 of Article 11 of the Tax Law. The City of New York had collected mortgage tax, penalties, and interest totaling \$15,103.98 from the Sheraton Corporation of America.

The transaction in question involved an original mortgage of \$2,200,000 secured by real property known as the Sheraton-Astor Hotel. Subsequently, the owners of the hotel property contracted to sell the hotel free and clear of this mortgage lien. In order to maintain a security to back up the original mortgage (which was held by a related corporation), the lien of the mortgage was spread to include, in addition, property known as the Sheraton-Ambassador Hotel. On the same day the parties to the mortgage executed a release of lien on the Sheraton-Astor Hotel.

The contention of the Recorder and Corporation Counsel of the City of New York was that in effect the parties through the spreading agreement and release of lien had cancelled the first mortgage and created an entirely new one.

In my opinion, the separation of the terms of the transaction between two documents was done entirely at the option of those persons who had drafted the forms. No apparent legal purpose was served thereby, and the transaction should be viewed in its entirety. In effect, the transaction constitutes a refunding of a mortgage indebtedness and not supplemental, as defined in Section 255.

Therefore, I offer the attached proposed decision, which affirms the position taken by the Recorder of the City of New York, for the approval of the Commission.

Lawrence A. Newman

LAWRENCE A. NEWMAN

Attachment

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Mortgage Executed by:

Sheraton-Ambassador Corporation :

to :

Sheraton Limited :

DECISION

Sheraton Corporation of America having filed a petition to the Tax Commission of the State of New York pursuant to Section 263 of the Tax Law for review of the Determination of the Recording Officer of New York County, and for a refund of a mortgage recording tax in the amount of \$10,301.00, together with interest and penalties in the amount of \$4,802.98 which it is claimed was erroneously collected by the City Register of New York County; and a hearing having been held before Samuel Lorvan, Hearing Officer, on April 24, 1968 at the State Office Building, 80 Centre Street, New York, New York; and the petitioner having appeared by their attorney, Paul V. Wolfe, Esq., and by their Vice President and General Counsel, N. Ronald Silberstein, Esq.; and the Corporation Counsel of the City of New York having appeared by Samuel K. Handel, Esq., special assistant Corporation Counsel.

Now therefore after examination of the record, the proofs and various documents submitted in the proceeding and after due deliberation,

In the matter of the Mortgage, recorded by:

Deveraux-Deveraux Corporation

DECEMBER

1911

Deveraux-Deveraux Corporation

Deveraux-Deveraux Corporation of New York having in its possession

to the State of New York, the State of New York, the State of New York

to the State of New York, the State of New York, the State of New York

of the Recording Office of New York County, and for a refund

of a mortgage recorded by the State of New York, the State of New York

together with interest and costs, the amount of

\$4,000.00 which is the amount of the mortgage recorded by

the State of New York, the State of New York, the State of New York

been paid before the State of New York, the State of New York, the State of New York

1911 of the State of New York, the State of New York, the State of New York

has been paid by the State of New York, the State of New York, the State of New York

and by the State of New York, the State of New York, the State of New York

and by the State of New York, the State of New York, the State of New York

and by the State of New York, the State of New York, the State of New York

and by the State of New York, the State of New York, the State of New York

of the State of New York, the State of New York, the State of New York

and various documents submitted in the proceeding and after

due notice.

The State Tax Commission hereby finds:

1. On February 29, 1956, Sheraton-Astor Corporation, a New York corporation, executed in favor of Sheraton Limited, a company incorporated under the laws of Canada, a mortgage to secure indebtedness in the sum of \$2,200,000 which mortgage covered certain real and personal property located in the City of New York, commonly known as the Sheraton-Astor Hotel. Said mortgage was duly recorded in the office of the City Register of New York County. At the time of so recording said mortgage, a recording tax of \$11,000 was paid.

On March 3, 1958 Sheraton-Ambassador Corporation, formerly Sheraton-Astor Corporation, and Sheraton Limited entered into a contract to spread the liens on the property covered by the mortgage of February 29, 1956 to include additional real property commonly known as the Sheraton-Ambassador Hotel, at which time there was indebtedness owing covered by the mortgage in the amount of \$2,060,243.48. The said spreading agreement of March 3, 1958 was accepted as exempt from tax under Section 255 of the Tax Law by the Register of New York County based upon a furnished affidavit of facts, and was recorded on March 4, 1958 in the office of the City Register of New York, County of New York:

On March 3, 1958 Sheraton-Ambassador Corporation and Sheraton Limited executed a release from the lien of mortgage of the real and personal property known as Sheraton-Astor Hotel, and the release was also recorded in the office of the Register of New York, County of New York.

The State Tax Commission hereby states:

1. On January 22, 1933, Ambassador Hotel Corporation,

a New York corporation, executed in favor of Hamilton Lumber

company incorporated under the laws of Canada, a mortgage

to secure indebtedness in the sum of \$2,500,000 with interest

covered certain real and personal property located in the City

of New York, to wit: the Ambassador Hotel, said

mortgage was duly recorded in the office of the City Register

of New York County. At the time of so recording said

mortgage, a recorded tax of \$11,000 was paid.

On March 1, 1933 Ambassador Hotel Corporation,

formerly Ambassador Hotel Corporation, and Hamilton Lumber

entered into a contract to sell the above described property

covered by the mortgage of January 22, 1933 to wit:

ambassador hotel, and certain personal property and fixtures

located on the premises of said hotel, and when the same were

covered by the mortgage of January 22, 1933, the same were

with certain other property, to wit: the same were

executed and the same were duly recorded in the office of the

Register of New York County, and when the same were

of fact, and was duly recorded in the office of the

the City Register of New York, and when the same were

on March 1, 1933 Ambassador Hotel Corporation

and Hamilton Lumber entered into a contract to sell the

mortgage of the real and personal property known as the Amba-

ssor Hotel, and the same was duly recorded in the office

of the Register of New York County of New York.

No additional money was loaned, given or delivered by reason of the two agreements dated March 3, 1958. However, a contemporaneous contract existed to sell the Sheraton-Astor Hotel, and deliver title to the said real property to an outside party as purchaser, free and clear of the aforementioned mortgage lien.

Several years later, on January 20, 1966, Sheraton Limited certified that the mortgage previously referred to in the principal sum of \$2,200,000, which mortgage was, by the terms of a spreading agreement dated March 3, 1958, spread to cover additional real property, was satisfied and paid.

Sheraton Corporation of America owned on January 20, 1966, the property subject to the lien of said mortgage of March 3, 1958, known as the Sheraton-Ambassador Hotel.

When the aforestated mortgage satisfaction was presented to the Register of New York County for recording, he refused to record the same unless a mortgage tax, interest and penalties, was paid in connection with the spreading agreement of March 3, 1958. The amount of the mortgage tax demanded by the Register was that provided for in Section 253 of the Tax Law in the amount of 50¢ for each \$100 on the \$2,060,243.48 of indebtedness owing as stated in the spreading agreement of March 3, 1958, which tax amounted to \$10,301.00. In addition, the interest and penalties demanded were \$4,802.98.

[illegible]

Sheraton Corporation of America paid the tax, penalties and interest totaling \$15,103.98 and protested the payment in writing of the said tax, interest and penalty. The mortgage satisfaction was thereupon accepted by the Register and recorded.

2. Section 255 of Article 11 of the Tax Law, relating to the mortgage recording tax, provides that "If subsequent to the recording of a mortgage.....an additional mortgage is recorded imposing the lien thereof upon property not originally covered by or not described in such recorded primary mortgage for the purpose of serving the principal indebtedness.....secured by such recorded primary mortgage, 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.....secured by the recorded primary mortgage."

3. In their interpretations of Section 255, the Courts have stressed form above substance. The courts have decided that consolidations of mortgages, changes in parties, maturity dates and/or interest rates may be recorded as exempt from the mortgage recording tax.

In the case before us, the spreading agreement and release of lien were executed by the same parties, on the same day, and filed in the same County office. The separation of

1. Section 20 of Article II of the Tax Law, relating to the mortgage recording act, provides that "if subsequent to the recording of a mortgage . . . any additional mortgage is recorded, claiming to be a valid lien on property not originally covered by or not described in a mortgage previously recorded for the purpose of creating the mortgage, such mortgage . . . , secured by such recorded primary mortgage, such additional instrument or mortgage shall not be subject to taxation under this article, so long as it relates or refers to a mortgage or mortgages already recorded or referred to by the recorded primary mortgage."

2. In the case of the mortgage of section 20, the courts have assessed four above questions. The courts have decided that consolidation of mortgages, such as in parties, whereby dates and amounts are not noted may be recorded as one mortgage. The courts have also decided that the mortgage recording act applies to the case before it, the mortgage instrument and release of lien were recorded by the same parties, on the same day, and filed in the same county office. The separation of

the terms of the transaction between two documents was a matter of convenience rather than of form. The transaction must be viewed in its entirety.

Effectively, the original mortgage secured by the Sheraton-Astor property was extinguished and a new mortgage was created and secured by the Sheraton-Ambassador Hotel property.

We conclude that the transaction constitutes a refunding of a mortgage indebtedness and not supplemental as defined in Section 255 of the Tax Law. Therefore, the transaction was subject to the mortgage recording tax to the extent of the total debt outstanding on the date of execution. (Sverdlow v. Bates, 283 A.D. 487; Fifth Avenue 46 Street v. Bragalini, 4 A.D. 2nd 387, Brodsky v. Murphy, 26 A.D. 2nd 225, affirmed 20 N.Y. 2nd 828.)

Now therefore, after due consideration, it is DETERMINED BY THE COMMISSION:

(A) The spreading agreement and release from the lien of mortgage, both dated March 3, 1958, do create and secure a new indebtedness or obligation other than the principal indebtedness secured by the primary mortgage date February 29, 1956.

(B) The aforementioned transactions dated March 3, 1958 are subject to the Mortgage Recording Tax.

(C) That the City Collector of New York in New York County had computed the aforementioned Mortgage Recording

The first of the two... the second...

most... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

...the... of the...

Tax at 50¢ each \$100 on the \$2,060,243.48 of indebtedness owing as stated in the spreading agreement of March 3, 1958.

(D) The sum of \$10,301.00 as Mortgage Recording Tax, and the sum of \$4,802.48 as interest and penalties thereon have been duly and correctly collected by the City Register in New York County.

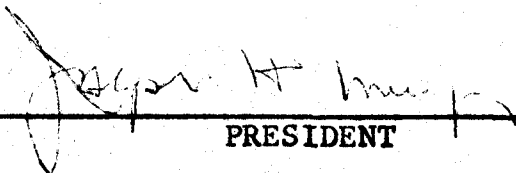
Now therefore, it is ordered:

1. The determination of the recording officer of New York County disallowing claim for exemption be and the same hereby is confirmed.

2. The application for refund be and the same is hereby denied.

Dated, Albany, New York, the

24th day of June 19 69.


PRESIDENT


COMMISSIONER


COMMISSIONER

and the sum of \$4,000.00 on interest and was filed in return
have been duly and properly collected by the City Engineer
it was found correct.

[illegible][illegible]

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

1970

FERNANDO LÓPEZ