

STATE OF NEW YORK  
STATE TAX COMMISSION

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INSTRUMENT EXECUTED BY  
IN THE MATTER OF THE ~~XXXXXXXXXXXXXX~~  
FRANKLIN - 86th CORP.

to  
ABRAHAM ELLIS AND MANHATTAN OPERA  
HOUSE BALLROOMS & BANQUET HALLS, INC.

ATTIDAVIT OF  
MAILING OF  
ORDER OF DETERMINATION  
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State of New York ) ss.  
City and County of Albany)

Terry M. Kinns , being duly sworn, deposes and  
says:

That your deponent is over the age of eighteen and  
an employee in the Office of the State Tax Commission, Depart-  
ment of Taxation and Finance, Mortgage & Real Estate Transfer  
Tax Section.

That on the 30th day of April 1970, your  
deponent deposited in a letter box exclusively maintained and  
controlled by the United States Government at the corner of  
Madison Avenue and So. Allen Street in the City and County of  
Albany, New York, a copy of the determination of the State Tax  
Commission in this proceeding, copy of which is hereto annexed,  
contained in a securely closed, postpaid cover, directed to the  
herein below named parties in this proceeding, their representa-  
tives and the recording officer of New York County at the  
addresses set forth below:

Sworn to before me this 4<sup>th</sup> day  
of May 1970.

Arthur Maxwell

Franklin - 86th Corp.  
333 West 86th Street  
New York, New York

Mr. Victor M. Rivera  
Register - New York County  
31 Chambers Street  
New York, New York 10007

Mr. Abraham Ellis  
254 Elm Wynd Drive  
Orange, New Jersey

Manhattan Opera House  
Ballrooms and Banquet Halls, Inc.  
311 West 34th Street  
New York, New York

Solomon J. Freedman, Esq.  
60 East 42nd Street  
New York, New York 10017

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Mortgage :  
Executed by :  
FRANKLIN - 86th CORP. : ORDER OF  
to : DETERMINATION  
ABRAHAM ELLIS AND MANHATTAN OPERA :  
HOUSE BALLROOMS & BANQUET HALLS, INC. :  
:

Franklin-86th Corp. has filed a petition to the State Tax Commission pursuant to Sections 251 and 263 of the Tax Law for review of the determination of the Recording Officer of New York County, and for a refund of mortgage recording tax in the amount of \$1337.50, together with interest from the date of payment.

A formal hearing was held in the City of New York before Lawrence A. Newman, Esq., Hearing Officer, for the State Tax Commission. The petitioner, Franklin-86th Corp. and the mortgagees, Abraham Ellis and Manhattan Opera House Ballrooms & Banquet Halls, Inc. appeared through their attorney, Solomon J. Freedman, Esq. The Register of the City of New York was represented by Alexander J. Weiss, Esq. Deputy Register. The Miscellaneous Tax Bureau of the Department of Taxation and Finance was represented by Edward H. Best, Esq. (Solomon Sies, of Counsel).

FINDINGS OF FACT:

1. On October 31, 1932, a mortgage was executed by 923 Third Avenue Corporation to Central Savings Bank in the amount of \$650,000, covering the premises now known as 333 West 86th Street, New York City. The mortgage was recorded in Liber 4187, at page 7 of mortgages in the Register's Office of New York

County, and a mortgage tax of \$6250 was paid at the time of filing. On September 15, 1967, a principal balance in the amount of \$267,500 remained unpaid.

2. On September 15, 1967, a mortgage was executed by Franklin-86th Corp. to Abraham Ellis and Manhattan Opera House Ballrooms and Banquet Halls, Inc. in the amount of \$832,500 also covering the premises now known as 333 West 86th Street, New York City. The mortgage was recorded in Liber 221, at page 416 of mortgages in the Register's Office of New York County.

The mortgage provides that it is subject and subordinate to the mortgage dated October 31, 1932 upon which there remained unpaid the principal sum of \$267,500.

Further provision of the mortgage obligated the holder thereof to protect the mortgagor against any default with respect to the earlier mortgage, as long as the mortgagor shall make the prescribed monthly payments to the mortgagee, and that the holder of the later mortgage shall apply said monthly payments in satisfaction of principal and interest on both mortgages. The holder of this later mortgage was authorized to refinance in whole or in part the debt secured thereby and/or the debt secured by any mortgage to which it is subordinate during the term of this mortgage. The mortgage also provided that, after the refinancing, the total principal indebtedness secured by the mortgages as refinanced, shall not be more than the total amount of the principal unpaid on the indebtedness secured by the first mortgage immediately prior to the refinancing.

A mortgage recording tax of \$5500 was paid at the time of filing, of which \$4162.50 was paid without protest and conceded. The petitioner has claimed a refund of the balance of \$1337.50 which was paid under protest.

3. The mortgage of October 31, 1932 was still in effect on January 29, 1969 when an instrument was executed by Maison MacBridge Inc. and Central Savings Bank of the City of New York purporting to extend the time for the payment of the unpaid principal sum of \$267,500 secured by the mortgage.

4. Section 253 of the Tax Law provides in part, that the mortgage recording tax is imposed upon a principal debt or obligation which is, or under any contingency may be, secured at the date of the execution thereof or at any time thereafter by a mortgage on real property.

By the terms of the mortgage dated September 15, 1967, the said mortgage was given to secure the sum of \$832,500, and through the provisions in the mortgage noted in paragraph 2 above, the holder of the mortgage was granted the authority to secure an additional amount not in excess of \$237,500, being the unpaid principal balance of the mortgage dated October 31, 1932.

The principal debt or obligation which provides the base upon which the tax is computed is deemed under Section 253 of the Tax Law, to be the sum of the above amounts, or \$1,100,000.

DETERMINATION:

A. The provisions contained within the mortgage executed by Franklin-86th Corp. to Abraham Ellis and Manhattan Opera House Ballrooms & Banquet Halls, Inc. and dated September 15, 1967 secure a principal debt or obligation which is, or under any contingency may be secured at the date of the execution thereof or at any time thereafter, in the sum of \$1,100,000.

B. Pursuant to Section 253 of the Tax Law, the mortgage recording tax on the aforementioned transaction was correctly computed by the City Collector of New York in the sum of \$5500.

C. The sum of \$5500 has been duly and correctly collected by the City Collector of New York in New York County as Mortgage Recording Tax.

D. The determination of the recording officer of New York County is confirmed.

E. The application for refund is denied.

Dated, Albany, New York this 29th day of April , 1970.

STATE TAX COMMISSION

Norman Gallman  
PRESIDENT

Richard K. ...  
COMMISSIONER

Milton K...  
COMMISSIONER