

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of Instruments Executed by :

LAUREN PROPERTIES, INC. :  
with : ORDER OF  
CHASE MANHATTAN BANK, trustee : DETERMINATION  
:

An application was made to the State Tax Commission by Lauren Properties, Inc., (hereinafter referred to as "Lauren") under Section 263 of the Tax Law for refund of \$29,000 mortgage recording tax paid to the recording officer of Queens County on March 30, 1965, upon the recording of an instrument called "Trust Indenture and Modification Agreement" dated February 15, 1965, executed by the Applicant to Chase Manhattan Bank, as Trustee, thereunder.

Pursuant to notice served on the interested parties, a hearing was held at the offices of the State Tax Commission in the City of New York on March 2, 1966, and continued to conclusion on June 8, 1967. On the basis of the record, and examination of the evidence,

The State Tax Commission finds:

1. Arlen of Douglaston, Inc. (hereinafter referred to as "Arlen") acquired title to certain real property, hereinafter referred to as Lot 185, in the County of Queens, City of New York, by deed dated October 8, 1963, acknowledged by one of the grantors on October 10, 1963, recorded October 17, 1963, in Book 7580 of Conveyances, at page 58; which deed recites it is made subject to a purchase money mortgage in the sum of \$887,500, intended to be recorded simultaneously therewith.

2. Arlen executed its mortgage note in the sum of \$887,500 and mortgage securing the same to the grantors Harry L. Osias, Leah Osias and Jack Parker on October 10, 1963. The mortgage was recorded on October 17, 1963, in Book 8276 of Mortgages, at page 394. Mortgage recording tax of \$4,437.50 was paid at recording and entered under serial number BG-12336.

3. Arlen later entered into a building loan agreement with Chase Manhattan Bank in the amount of \$4,912,500; and on July 24, 1964, executed its mortgage note in that sum and mortgage covering lot 185 only securing the same to Chase Manhattan Bank. The mortgage was recorded on July 29, 1964, in Book 8449, at page 51. Mortgage recording tax of \$24,562.50 was paid at recording and entered under serial number BH-7269.

4. The mortgagees, Osias and Parker, by instrument dated July 20, 1964, assigned the mortgage for \$887,500 recorded in Book 8276, page 394, and the mortgage note secured thereby to Chase Manhattan Bank. The assignment was recorded on July 29, 1964, in Book 8449, page 93.

5. By instrument dated July 24, 1964, by Chase as mortgagee and Arlen as mortgagor, said mortgage of \$887,500 was modified to conform its terms with those in the mortgage for \$4,912,500 held by Chase. The modification agreement was recorded on July 29, 1964, in Book 8449, at page 71.

6. Arlen conveyed lot 185 to Douglaston Associates, a joint venture, by deed dated July 27, 1964, recorded March 30, 1965 in Book 7761 of Deeds, page 289.

7. By deed dated October 15, 1964, Harry L. Osias, Leah Osias and Jack Parker conveyed lot 186 to Arlen of Queens, Inc. (hereinafter referred to as Queens) by deed recorded October 22, 1964 in Book 7709 of Deeds, page 33.

8. Queens conveyed said lot 186 to Douglaston Associates, by deed dated October 21, 1964, recorded March 30, 1965 in Book 7761, page 293.

9. Douglaston Associates conveyed lots 185 and 186 to Arlen by two deeds both dated February 5, 1965, recorded March 30, 1965 in Book 7761, at pages 332 and 336, respectively.

10. By instruments dated February 8, 1965, by Arlen with Chase, recorded March 30, 1965, in Book 8599 of Mortgages, pages 107 and 117, respectively, the liens of the purchase money mortgage for \$887,500 and the building loan mortgage for \$4,912,500 which covered lot 185 were spread to cover lot 186 as well.

11. Arlen conveyed lots 185 and 186 to Douglaston Associates by two deeds, both dated February 8, 1965, recorded March 30, 1965 in Book 7761, pages 338 and 342, respectively.

12. On February 15, 1965, Douglaston conveyed lots 185 and 186 to Lauren by two deeds recorded March 30, 1965, in Book 7761, at pages 402 and 400, respectively.

13. On February 15, 1965, Lauren executed to Chase, as Trustee, an instrument called a "Trust Indenture and Modification Agreement." This instrument was recorded on March 30, 1965, in Book 8599, at page 239. Mortgage recording tax of \$29,000 was paid at recording and entered under serial number BH-21693. Notice of protest was filed at recording. The application is for refund of tax paid on this instrument.

By this trust indenture and while the mortgages for \$887,500 and \$4,912,500, in which Arlen was the obligor, were still outstanding and were held by Chase, in its individual and private capacity, Lauren issued "Secured Notes" in the total sum of \$8,000,000 to Mutual Benefit Life Insurance Company and eight other life insurance companies. These Secured Notes were existent, outstanding and secured by a formal mortgage while the Arlen mortgages and the obligations secured under the earlier recorded mortgages were existent and outstanding. The Secured Notes constituted new or additional

indebtedness within the meaning of the mortgage recording tax law. People ex rel. Boston & Maine Railroad, 202 App. Div. 54, affd. 234 N. Y. 629.

14. Chase Manhattan Bank in consideration of \$5,800,000 received by Chase as Trustee, upon issuance of Secured Notes in that amount under the Trust Indenture, by instruments dated February 15, 1965, assigned the mortgages totalling \$5,800,000 (those for \$887,500 and for \$4,912,500, respectively) to Chase Manhattan Bank, as Trustee.

15. On February 15, 1965, Lauren executed its mortgage note in the sum of \$2,200,000 and mortgage securing the same to Chase, as Trustee. The mortgage was recorded on March 30, 1965 in Book 8599, at page 211. Mortgage recording tax of \$11,000 was paid at recording and entered under serial number BH-21692.

16. On February 15, 1965, Chase, as Trustee, and Lauren executed an agreement wherein the three mortgages, those for \$887,500 and for \$4,912,500, in which Arlen was the obligor and for \$2,200,000 in which Lauren was the obligor, were consolidated into a single lien in the principal sum of \$8,000,000. The terms of payment of the mortgages in which Arlen was obligor were extended. By such extension, Arlen's obligations under previously recorded mortgages were discharged. This instrument was recorded on March 30, 1965 in Book 8599, at page 222.

17. The old indebtedness was discharged when Lauren and the Trustee extended the terms of payment of the mortgages in which Arlen was the obligor. Cancellation of the original obligation was the absolute unavoidable result of the transaction. The obligations originally secured were cancelled and replaced by new obligations. Such new obligations constitute new indebtedness.

18. The instrument under review dated February 15, 1965 called "Trust Indenture and Modification Agreement", executed by Lauren to the Trustee:

(a) is a mortgage of real property within the meaning of Section 250 of the Tax Law and is not an extension agreement.

(b) secures new indebtedness in the form of "Secured Notes" in the sum of \$5,800,000 in which Lauren as obligor, issued under said instrument.

(c) is a new mortgage to secure new indebtedness to extent of \$5,800,000 due and owing by Lauren, a new obligor, to Mutual Benefit Life Insurance Company and eight other life insurance companies, new obligees.

(d) is, therefore, not supplemental to prior recorded mortgages in which Arlen was obligor and Irving was obligee.

Now, therefore, after due consideration, it is

DETERMINED BY THE COMMISSION:

(A) The instrument under review, dated February 15, 1965, entitled "Trust Indenture and Modification Agreement" is not a supplemental mortgage within the meaning of Section 255 of the Tax Law.

(B) The recording of said instrument under review was subject to the Mortgage Recording Tax.

(C) The said mortgage recording tax of \$29,000, computed upon a new indebtedness of \$5,800,000, at the rate of 50¢ for each \$100 of indebtedness, has been duly and correctly collected by the City Register of the City of New York for the County of Queens.

Now, therefore, it is ordered:

1. The determination of the recording officer of Queens County disallowing claims for exemption be and the same is hereby confirmed.

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

Dated, Albany, New York, this 24<sup>th</sup> day of March, 1970.

STATE TAX COMMISSION

Norman Galloran  
PRESIDENT

Charles Mancuso  
COMMISSIONER

William Korman  
COMMISSIONER