

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of Two Instruments	:	
Executed by	:	
Abbey Associates, a Copartnership	:	ORDER OF
	:	DETERMINATION
with	:	AND REFUND
Hotel Abbey Holding Corporation	:	

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Mr. A. S. Gittlin, as general partner of the Benjamin Company, a partnership, filed a petition with the State Tax Commission pursuant to Article 11 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 one thousand three hundred thirty-five (1,335.) dollars.

Upon notice to all interested parties, a formal hearing was held on June 7, 1967 in the offices of the State Tax Commission in the City of New York. The City Register of New York was represented by Samuel K. Handel, Esq. and the Benjamin Company was represented by Bendes, Stark, and Amron, Esq. (M. Albert Bendes, Esq., of Counsel).

FINDINGS OF FACT

1. Sylvia and Louis Zuch, as owners of the fee on May 1, 1951, leased the premises known as the Hotel Abbey to Abbey Holding Corp. Later, a partnership known as Abbey Associates succeeded as landlord, and Hotel Abbey Holding Corp. succeeded as tenant. The successors modified the original agreement on February 1, 1955, May 1, 1958, August 1, 1958 and December 3, 1962. The modifications dated February 1, 1955 and December 3, 1962 are in issue.

2. The modification dated February 1, 1955 was recorded by the recording officer on May 21, 1959 in liber 5077 of conveyances, at page 567. The provisions substituted a new lease in place of the prior lease dated May 1, 1951. The new lease was to run for a term of 21 years from July 1, 1955 at a minimum rental of \$375,000 per annum, and, as additional rent, all taxes and other assessments imposed on the premises would be paid by the tenant.

3. The modifications dated December 3, 1962 were recorded by the recording officer on December 20, 1962 in liber 5212 of conveyances, at page 455. The provisions include a consent by the landlord to an assignment of the current lease by Hotel Abbey Holding Corp., as tenant, to Benjamin Associates, as successor-tenant.

Prior to the modification of the lease, the sum of \$197,652 was owed by the ~~H~~otel Abbey Holding Corp. to Abbey Associates, the landlord. As part of the modifications agreed to by the landlord and tenant, the fixed minimum rentals payable under the lease were increased in lieu of the tenant's obligation to pay the unpaid sum of money.

The annual rental had been previously increased to \$405,000 by modification dated August 1, 1958. The annual rental payments were further increased by the latest modification to read as follows:

a. November 1, 1962 to October 31, 1968	\$427,000 per year
b. November 1, 1968 to October 31, 1977	418,000 per year
c. November 1, 1977 to October 31, 1980	411,000 per year
d. November 1, 1980 to April 30, 1997	405,000 per year

4. On December 7, 1962 the lease was assigned by the Hotel Abbey Holding Corp. to Benjamin Associates. The Assignment was recorded on December 20, 1962 in liber 5212 of conveyances, at page 450, by the recording officer.

5. When the modification agreement dated December 3, 1962 and the assignment dated December 7, 1962 were presented to the City Register for recording, the Register refused to record the instruments unless a mortgage tax in the amount of \$1,335 was paid. The Benjamin Company paid the sum of \$1,335 to the City Register under protest.

6. There is no security device set forth in either the modification agreement of February 1, 1955, or of December 3, 1962, and neither of them is a lien upon the fee or the lease.

#### DETERMINATION

A. The two instruments executed by Abbey Associates, a copartnership, with Hotel Abbey Holding Corporation and which are dated February 1, 1955 and December 3, 1962 when viewed individually or in combination, do not constitute a mortgage of real property within the meaning and intent of Article 11 of the Tax Law.

B. The recording officer of New York County erroneously collected mortgage recording tax of \$1,335, upon the recording of the instrument dated December 3, 1962.

#### REFUND ORDER


I. The recording officer of New York County is authorized and directed to deduct the sum of \$1,335. from mortgage tax monies in his hands, or which shall come to his hands and to refund this amount to the Benjamin Company, a partnership.

II. Two certified copies of this order shall be mailed to the recording officer of New York County, one of which shall be filed with the records of his office, and the other with the treasurer of the City of New York as a warrant for the disbursement.

DATED: Albany, New York  
March 16, 1971

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

*Abbey Associates . . .  
Mortgage Tax 1971*

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TWO INSTRUMENTS EXECUTED BY  
IN THE MATTER OF THE APPLICATION OF :  
ABBEY ASSOCIATES, a Copartnership :  
: AFFIDAVIT OF  
: :  
\*s with :  
HOTEL ABBEY HOLDING CORPORATION :  
: MAILING  
: :  
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State of New York ) ss.  
City and County of Albany)

LOUIS C. JOHNSON, 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 11th day of May 1971, your  
deponent deposited in a letter box exclusively maintained and  
controlled by the United States Government at  
Fuller Road Post Office 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:

*Louis C. Johnson*

Sworn to before me this 17 day  
of May 1971.

*Arthur M. Matwell*

Abbey Associates, a Copartnership, 45 John St., New York, N. Y.  
Hotel Abbey Holding Corporation, 1501 Broadway, New York, N. Y.  
Hon. J. Lee Rankin, Corporation Counsel, City of New York,  
Municipal Building, New York, N. Y.  
Natanson & Gordon, Esqs., 11 West 42nd Street, New York, N. Y.  
Bondes, Stark & Amron, Esqs. 733 Third Avenue, New York, N. Y.  
Benjamin Company, 33 East 48th Street, New York, N. Y.  
Mr. Victor M. Rivera, Register - New York County, 31 Chambers St.,  
New York, N. Y. 10007