

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Instrument Executed by	:	
ALBEE FUEL CORP.	:	
to	:	ORDER OF
FIRST NATIONAL CITY BANK OF NEW YORK	:	DETERMINATION
and the application of Article Eleven of the	:	
Tax Law thereto.	:	

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An instrument executed by Albee Fuel Corp. to First National City Bank of New York, was recorded in the office of the City Register in Kings County on December 29, 1969, on reel 385 of mortgages, page 278.

In accordance with the provisions of Article Eleven of the Tax Law, a formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission on September 22, 1970, to review the acts and determinations of the recording officer relating to the instrument in issue.

APPEARANCES

The Miscellaneous Tax Bureau, by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel); Albee Fuel Corp. by Langberg and Ringel, Esq., (Nathan Ringel, Esq., of Counsel); and City Register of New York, by J. Lee Rankin, Esq., (Alexander J. Weiss, Esq., of Counsel).

ISSUE

Whether the instrument in issue is a "mortgage" within the meaning and intent of Article Eleven of the Tax Law.

FINDINGS OF FACT

1. Albee Fuel Corp. owned the fee in a parcel of real property located in Kings County on the southerly side of Bay Parkway at or about its intersection with the Pierhead Line.

2. E. J. K. Realty New York Corp. occupied the premises as successor lessee under a lease agreement commencing April 1, 1966, and terminating on December 31, 2065, for a term of ninety nine years and nine months. The successor lessee was obligated to pay periodic rent to Albee Fuel Corp., which as successor holder of the fee, was also owner of the aforesaid lease.

3. On December 29, 1969, in order to induce the First National City Bank of New York to loan the sum of \$1,650,000 to Cirillo Bros. Sales Corp., the Albee Fuel Corp. assigned to the Bank all rents and other payments payable by the successor lessee or its successors and assigns, as "collateral security for the guaranty of repayment to the extent of one million dollars and interest."

4. Albee Fuel Corp. could not surrender, cancel or modify the lease without the written consent of the Bank.

5. At the time of the filing of the instrument on December 29, 1969, the sum of \$7,500 of mortgage recording tax was paid to the City Register in Kings County, under protest, on behalf of the Albee Fuel Corp.

6. The tax was computed at the rate of 75 cents per hundred dollars, on the principal amount of one million dollars.

7. The Albee Fuel Corp. filed a petition to the State Tax Commission, and claimed a refund of \$7,500.

8. Section 250 of the Tax Law defines the term "mortgage" to include every mortgage or deed of trust which imposes a lien on or affects the title to real property, notwithstanding that such property may form a part of the security for the debt or debts secured thereby. The term "real property" is defined to include everything a conveyance or mortgage of which can be recorded as a conveyance or mortgage of real property under the laws of the state.

9. Section 290 of the Real Property Law, defines the term "real property" to include lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years.

10. Section 294A of the Real Property Law permits the recording of assignments of rent by the recording officer in the county in which the real property is located, if the assignment is made, subscribed and acknowledged or proved, and certified in a manner to entitle a conveyance to be recorded.

DETERMINATION

A. The instrument in issue is a "mortgage" within the meaning and intent of Article Eleven of the Tax Law.


B. The act of the recording officer in recording the instrument is correct and the determination by the recording officer is sustained.

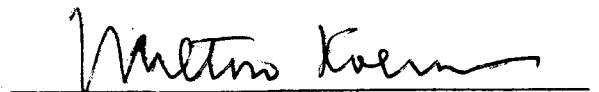
C. The claim for refund is denied.

DATED: Albany, New York  
*June 28, 1971*

STATE TAX COMMISSION

  
COMMISSIONER

  
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COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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INSTRUMENT BY  
IN THE MATTER OF THE ~~APPLICANT~~ :  
Albee Fuel Corp. :  
to :  
First National City :  
Bank of New York :  
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ATTIDAVIT OF  
MAILING

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 15th day of July, 1971, your  
deponent deposited in a letter box exclusively maintained and  
controlled by the United States Government at  
1 Fuller Road, 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 Kings County at the  
addresses set forth below:

Sworn to before me this 16<sup>th</sup> day  
of July 1971.

Arthur Maxwell

Mr. Victor M. Rivera, Register - New York County, 31 Chambers St.,  
N.Y.C. 10007

Langberg & Ringel, Esqs., 111 Broadway, N.Y.C. 10006

First National City Bank of New York, 55 Wall Street, N.Y.C.

Albee Fuel Corp., 111 Broadway, N.Y.C. 10006

Cirillo Bros. Sales Corporation, 1066 Zarego Avenue, Bronx, N.Y.