

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of an Instrument Executed by :
JOHN GRAY AND CAROLE GRAY :
with : DETERMINATION
MARVIN H. WERNICK AND ROSALIE WERNICK, :
and the application of Article Eleven of the :
Tax Law thereto. :

An instrument entitled "Memorandum of Lease" executed by John Gray and Carole Gray with Marvin H. Wernick and Rosalie Wernick, dated September 4, 1970, was filed with the Recording Officer of Suffolk County on September 15, 1970, in liber 6807 of conveyances, at page 148.

On notice to all parties, a formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on January 21, 1971, to review the acts and determination of the recording officer relating to the instrument in issue.

The Miscellaneous Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel). Marvin H. Wernick and Rosalie Wernick were represented by Robert Hodes, Esq.

ISSUES

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

II. Whether the instrument qualifies for the exemption of \$10,000 of the principal debt under section 253 of the Tax Law.

FINDINGS OF FACT

1. The instrument in issue was recorded under the provisions of section 291C of the Real Property Law, permitting the recording of memoranda of leases.

2. The lease agreement referred to in the recording instrument, was to run for a period of two years beginning October 1, 1970, at a

monthly rental of \$625, covering a one-family residence and specified interior furnishings located in the Town of Huntington, New York.

3. The tenants, Marvin and Rosalie Wernick, were granted the right to occupy the premises on or before October 1, 1970, the commencement date of the term of the lease.

4. John and Carole Gray, the owners of the fee, granted to the tenants, in the provisions of the lease agreement, the right to purchase the property for the sum of \$63,000, less specific, adjustments, on or before the expiration of the lease. The landlords agreed to convey a "bargain and sale" deed to the tenants within 30 days after notice from the tenants of their intention to make the purchase.

5. At the time of the filing of the instrument, the sum of \$472.50 was paid to the Recording Officer of Suffolk County, under protest, on behalf of Marvin and Rosalie Wernick. The amount was computed at 75 cents per hundred dollars of principal obligation applied to the total amount of \$63,000.

6. Section 250 of the Tax Law provides that executory contracts for the sale of real property under which the vendee has or is entitled to possession shall be deemed to be mortgages for the purposes of Article Eleven of the Tax Law.

7. The instrument in issue is an executory contract for the sale of realty under which the vendee is entitled to possession.

8. The tenants were permitted to use the premises "as a one-family residence and for any other purpose permitted by the governmental authorities having jurisdiction therein." However, proof of the deduction of \$10,000 in principal obligation provided for under section 253 of the Tax Law, (in the form of an affidavit or in the instrument, required under section 403.1 of the Rules and Regulations of the Department) was not submitted at the time of recording.

DETERMINATION

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

B. The instrument does not qualify for a deduction of the first \$10,000 of principal debt under section 253 of the Tax Law.

C. The amount of mortgage recording tax of \$472.50 was correctly collected by the recording officer upon the recording of the instrument.

D. The acts and determination of the recording officer are correct and hereby sustained.

DATED: Albany, New York

July 2 1971

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Robert M. Hanley
COMMISSIONER

Walter Kruman
COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

INSTRUMENT BY
IN THE MATTER OF THE APPLICATION OF :
John Gray and Carole Gray :
with xdo :
Marvin H. Fernick and :
Rosalie Fernick :

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 Suffolk County at the
addresses set forth below:

Sworn to before me this 16th day
of July 1971.

Arthur Maxwell

Mr. Lester M. Albertson, Suffolk County Clerk, Riverhead, N.Y. 11901
Mr. & Mrs. John Gray, 1801 J.F.K. Boulevard, Apt. 2608, Philadelphia,
Pennsylvania
Mr. & Mrs. Marvin H. Fernick, 14 Pettit Drive, Dix Hills, N.Y.
Robert Hodes, Esq., 450 West 3rd Street, N.Y.C. 10001