

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Applications	:	
of	:	
BAY VIEW TOWERS APARTMENTS, INC. and	:	
BRIARWOOD TERRACE, INC.	:	DETERMINATION
for a Refund of Mortgage Recording Taxes	:	
and Penalties Paid Under Protest to the	:	
Register of the City of New York, Queens	:	
County in Connection with an Instrument	:	
Recorded on Reel 524, Page 441 and an	:	
Instrument Recorded on Reel 545, Page	:	
1860 in the Office of said Register.	:	

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Applicant, Bay View Towers Apartments, Inc., has filed an application for refund of mortgage recording tax and penalties in the sum of \$42,866.25 paid under protest to the Register of the City of New York, Queens County in connection with an instrument recorded on Reel 524, page 441 in the office of said Register.

Applicant, Briarwood Terrace, Inc., has filed an application for refund of mortgage recording taxes in the sum of \$12,206.25 and \$10,427.63, respectively, paid under protest to the Register of the City of New York, Queens County in connection with instruments recorded on Reel 524, page 441 and Reel 545, page 1860, respectively, in the office of said Register.

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on January 23, 1973, at 9:30 A.M. Applicant, Briarwood Terrace, Inc., (hereinafter referred to as "Briarwood"), appeared by Walker & Walker, Esqs., (Edward N. Walker, Esq., of Counsel). Bay View Towers Apartments, Inc., (hereinafter referred to as "Bay View"), appeared by Tenzer, Greenblatt, Fallon & Kaplan, (Bernard H. Goldstein, Esq., and Bruce Younger, Esq., of Counsel).

The Title Guarantee Company appeared by Irwin J. Weinstein, Esq. The City Register of the City of New York, County of Queens, appeared by Alexander J. Weiss, Esq. The Miscellaneous Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

#### ISSUES

I. Was the recording of a "Mortgage Severance and Modification Agreement" dated October 29, 1971, between Village Mall at Bayside and Long Island Savings Bank subject to the mortgage recording tax?

II. Was the recording of a "Supplemental Mortgage Agreement" dated January 13, 1972, between Briarwood and Long Island Savings Bank subject to the mortgage recording tax?

#### FINDINGS OF FACT

1. On July 16, 1971, Village Mall at Bayside, Inc., (hereinafter called "Village Mall"), as mortgagor, executed and delivered to Long Island Savings Bank as first mortgagee, its promissory note in the principal sum of \$4,150,000.00, payable July 16, 1973, with interest at 10.8% per annum, payable monthly. Simultaneously therewith, and as security for the payment thereof, the mortgagor executed and delivered to the mortgagee, its mortgage dated July 16, 1971, covering property in Bayside, Queens County, New York. The said mortgage was duly recorded in the office of the Register of the City of New York, Queens County on July 27, 1971, on Reel 496, at page 781, and the full mortgage tax due thereon was paid. Paragraph 21 of the mortgage provided for the release of portions of the mortgaged premises upon the payment of certain sums. It did not contain any provisions for the severing, splitting or dividing of the mortgage in a supplemental instrument.

2. Thereafter, on October 29, 1971, an instrument called a "Mortgage Severance and Modification Agreement" was entered into between Long Island Savings Bank and Village Mall. Said instrument

was recorded in the office of the Register of the City of New York, Queens County on November 10, 1971, on Reel 524 at page 441. Accompanying the recording of said agreement was an affidavit of Pierce J. Power, an attorney for Long Island Savings Bank, sworn to on October 29, 1971, requesting that the instrument be declared exempt from the mortgage recording tax pursuant to section 255 of the Tax Law. No mortgage recording tax was paid or demanded by the Register at the time of recording. The agreement provided that the lien upon the parcel set forth in the mortgage of July 16, 1971, be severed, split and divided into a first mortgage on one portion of the aforesaid parcel securing the principal sum of \$3,220,000.00 and interest and a first mortgage on the remaining portion of the aforesaid parcel securing the principal sum of \$930,000.00 and interest. It did not contain any provisions providing for the severing, splitting or dividing of the mortgages created by the agreement in supplemental instruments.

3. Following the execution and delivery of said agreement, Village Mall conveyed to Briarwood the portion of said large tract of land, secured by the mortgage in the sum of \$930,000.00. It retained for itself the remainder of said tract of land, which remainder was secured by the mortgage in the sum of \$3,220,000.00. Thus, by reason of the conveyance and the "Mortgage Severance and Modification Agreement", Briarwood became the owner of said parcel subject to a mortgage lien of \$930,000.00. Thereafter, the Miscellaneous Tax Bureau ordered an estoppel notice to be placed on the margin record of the aforesaid "Mortgage Severance and Modification Agreement" making it impossible for Village Mall, Briarwood or Bay View to have any further instruments recorded with reference to the said parcels.

4. On August 30, 1972, Briarwood paid, under protest, a mortgage tax plus penalty in the sum of \$12,206.25, said tax being computed on the mortgage lien of \$930,000.00, in order to have the aforesaid estoppel notice cancelled.

5. On January 13, 1972, Long Island Savings Bank and Briarwood executed an agreement entitled a "Supplemental Mortgage Agreement". It was recorded on the same day in the office of the Register of the City of New York, Queens County, on Reel 545, page 1860, without payment of any recording tax being made or requested. Accompanying the recording of said "Supplemental Mortgage Agreement", was an affidavit of Pierce J. Power, sworn to on January 13, 1972, requesting that the instrument be declared exempt from the mortgage recording tax pursuant to section 255 of the Tax Law.

6. On or about August 2, 1972, the Miscellaneous Tax Bureau ruled that a mortgage tax in the sum of \$10,075.00 was payable at the time of recording of the aforesaid "Supplemental Mortgage Agreement". On August 30, 1972, Briarwood paid, under protest, the aforesaid tax plus penalty in the total sum of \$10,427.03, said tax being computed on the mortgage lien of \$930,000.00.

7. On September 27, 1972, Bay View and Security National Bank, entered into a consolidation agreement affecting the portion of the parcel secured by the mortgage lien in the sum of \$3,220,000.00 as set forth in the "Mortgage Severance and Modification Agreement" between Long Island Savings Bank and Village Mall dated October 29, 1971, which consolidation agreement the Register of Queens County refused to record because of the aforesaid estoppel notice.

8. On November 21, 1972, Bay View paid, under protest, a mortgage tax plus penalty in the sum of \$42,866.25 said tax being computed on the mortgage lien of \$3,220,000.00.

CONCLUSIONS OF LAW

A. That the "Mortgage Severance and Modification Agreement" between Long Island Savings Bank and Village Mall dated October 21, 1971, was an instrument subject to the mortgage recording tax pursuant to sections 250 and 253 of the Tax Law unless it was otherwise exempted pursuant to section 255 of the Tax Law.

B. That the "Supplemental Mortgage Agreement" between Long Island Savings Bank and Briarwood, dated January 13, 1972, was an instrument subject to the mortgage recording tax pursuant to sections 250 and 253 of the Tax Law unless it was otherwise exempted pursuant to section 255 of the Tax Law.

C. That since the mortgage between Village Mall and Long Island Savings Bank dated July 16, 1971, did not contain any provisions for the severance, splitting or dividing of said mortgage in a supplemental instrument, therefore the "Mortgage Severance and Modification Agreement" dated October 29, 1971, between said parties, which severed, split and divided said mortgage, was not a supplemental instrument recorded pursuant to some provision or covenant of the original mortgage and thus was not exempt from the mortgage recording tax in accordance with the meaning and intent of section 255 of the Tax Law.

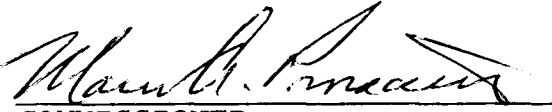
D. That since the "Mortgage Severance and Modification Agreement" between Village Mall and Long Island Savings Bank dated October 29, 1971, did not contain any provisions for the severing, splitting or dividing of the mortgage lien of \$930,000.00 created by said agreement in a supplemental instrument, therefore the "Supplemental Mortgage Agreement" dated January 13, 1972, between Briarwood and Long Island Savings Bank, which severed, split and divided the mortgage lien of \$930,000.00, was not a supplemental instrument recorded pursuant to some provision or covenant of the "Mortgage Severance and Modification Agreement", and thus was not exempt from the mortgage recording

tax in accordance with the meaning and intent of section 255 of the Tax Law.

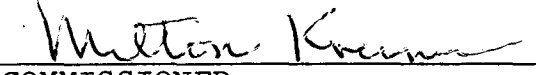
E. That the applications of Briarwood and Bay View are denied.

DATED: Albany, New York  
October 16, 1973

STATE TAX COMMISSION

  
COMMISSIONER

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COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION OF :  
BAY VIEW TOWERS APARTMENTS, INC. and : ATTIDAVIT OF  
to : MAILING  
BRIARWOOD TERRACE, INC. :  
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State of New York ) ss.  
City and County of Albany)

Fred A. Baker , 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 23rd day of October 1973, your  
deponent deposited in a letter box exclusively maintained and  
controlled by the United States Government at Albany  
Tudor 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 Queens County at the  
addresses set forth below:

Fred A. Baker

Sworn to before me this 23rd day  
of October 1973.

Arthur Maxwell  
~~Arthur Maxwell~~

Briarwood Terrace, Inc.  
36-36 Bell Boulevard  
Bayside, New York

Village Hall at Bayside, Inc.  
213-09 41st Avenue  
Bayside, New York

Long Island Savings Bank  
Bridge Plaza North  
Long Island City, New York

Walker & Walker, Esqs.  
60 East 42nd Street  
New York, New York 10017

The Title Guarantee Company  
120 Broadway  
New York, New York 10005

Mr. Alexander J. Weiss  
Register - Queens County  
31 Chambers Street  
New York, New York

Norman Rodlich, Esq.  
Corporation Counsel  
City of New York  
Law Department  
Municipal Building  
New York City, New York 10007

Bay View Towers Apartments, Inc.  
c/o Tenzer, Greenblatt, Fallon  
& Kaplan, Esqs.  
235 East 42nd Street  
New York, New York 10017