

STATE OF NEW YORK
STATE TAX COMMISSION

a Mortgage

In the Matter of ~~the Petitioner~~

Executed by ~~of~~ H STREET CORPORATION

to

A. J. ARMSTRONG COMPANY, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

~~For~~ ~~Redetermination~~ ~~of~~ ~~Deficiency~~ ~~or~~

~~Refund~~ ~~of~~

~~Taxes~~ ~~under~~ ~~Article~~ ~~(s)~~ ~~of~~ ~~the~~

~~Tax~~ ~~Law~~ ~~for~~ ~~the~~ ~~(Year)~~ ~~(s)~~

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of September , 1973 , she served the within Notice of Decision (or Determination) by (certified) mail upon SEE ATTACHED LIST

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: SEE ATTACHED LIST

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

26th day of September , 1973 .

Joyce S. Van Patten

Martha Funaro

Applicants:

H Street Corporation
701 Seneca Street
Buffalo, New York

A. J. Armstrong Company, Inc.
850 Third Avenue
New York, New York

Representative:

Arnold B. Gardner, Esq.
120 Delaware Avenue
Buffalo, New York

County Treasurer:

Mr. Frank Gawronski
Commissioner of Finance
Erie County Treasurer
45 Church Street
Buffalo, New York



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino,

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

September 26, 1973

H Street Corporation
701 Seneca Street
Buffalo, New York

Gentlemen:

Please take notice of the DETERMINATION
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) 251 of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within 4 Months
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of a Mortgage	:	
Executed by	:	
H STREET CORPORATION	:	DETERMINATION
to	:	
A. J. ARMSTRONG COMPANY, INC.	:	

This proceeding was initiated by applicant, H Street Corporation, pursuant to the provisions of section 251 of the Tax Law to review the act of the recording officer of Erie County in recording the instrument in the form of a mortgage dated April 6, 1966, executed by H Street Corporation to A. J. Armstrong Company, Inc., recorded in the office of said recording officer on April 6, 1966, in Book 6658 of Mortgages, at page 263; the determination of the recording officer, if any, and the application of Article 11 of the Tax Law thereto.

Upon notice to all interested parties, a formal hearing was held before Lawrence A. Newman, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on July 15, 1969, at 10:00 A.M. H Street Corporation appeared by Kavinoky, Cook, Hepp, Sandler & Gardner, Esqs., (Arnold B. Gardner, Esq., of Counsel). The Miscellaneous Tax Bureau appeared by Edward H. Best, Esq., (Solomon Sies, Esq., and Albert J. Rossi, Esq., of Counsel).

ISSUE

Was an additional mortgage recording tax due for the recording of a mortgage dated April 6, 1966, executed by H Street Corporation to A. J. Armstrong Company, Inc., upon the grounds that it was a mortgage for an indefinite amount?

FINDINGS OF FACT

1. A. J. Armstrong Company, Inc. lent one million two hundred thousand dollars (\$1,200,000.00) to two corporations, each of which was a subsidiary of a common parent. Said loan was made by the lending of four hundred thousand dollars (\$400,000.00) to H Street Corporation and by the lending of eight hundred thousand dollars (\$800,000.00) to Senvick Corporation.

2. A mortgage dated April 6, 1966, was executed by H Street Corporation to A. J. Armstrong Company, Inc. and was recorded in the office of the recording officer of Erie County on April 6, 1966, in Book 6658 of Mortgages, page 263.

3. The aforesaid mortgage recited, in part, that it was given

"to secure the payment of an indebtedness in the sum of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) lawful money of the U.S. to be paid in accordance with Note of even date herewith *** and an additional sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) as set forth in Rider attached herewith according to a certain bond, note or obligation bearing even date herewith *** .

4. The aforesaid mortgage further provided in part that,

"In addition to the note above mentioned, this mortgage shall secure any and all further loans or indebtedness or obligations owed or to be owed by the Mortgagor to the Mortgagee, however and whenever arising, and whether under this instrument or otherwise, including but not limited to the obligations of the Mortgagor to the Mortgagee under a certain guarantee agreement dated April 6, 1966, given by the Mortgagor to the Mortgagee guaranteeing the obligations of Senvick Corporation to the Mortgagee, limited, however, to a continuing liability under such guaranty not in excess of one hundred thousand dollars, (\$100,000.00). ***

"Any default under a certain mortgage dated April 6, 1966, having Senvick Corporation, as mortgagor, and A. J. Armstrong Company, Inc., as mortgagee, shall constitute a default under this mortgage."

5. At the recording of the aforesaid mortgage on April 6, 1966, there was paid to the recording officer, mortgage recording tax of \$2,000.00.

6. At recording of the aforesaid mortgage a statement sworn to April 6, 1966, by Manuel S. Winston, Executive Vice President of H Street Corporation was filed with the recording officer in which exemption from mortgage recording tax computed upon the sum of \$100,000.00 was requested pursuant to section 255 it being asserted therein that the mortgage was supplemental to that extent to a mortgage simultaneously recorded therewith dated April 6, 1966, executed by Senvick Corporation to A. J. Armstrong Company, Inc.

The affidavit specifically provided

"The total sum being advanced by A. J. Armstrong Co., Inc. to H Street Corporation and Senvick Corporation and secured by said mortgages is the sum of \$1,200,000.00. The additional \$100,000.00 referred to as collateral in each mortgage is so-called "cross-collateral", each mortgage standing to secure that amount of the borrowings by the other corporation, and said additional total of \$200,000.00 does not represent any additional advance of funds, property, or consideration of any kind whatsoever. To the extent of \$100,000.00 in each case, the two said mortgages are supplemental mortgages within the meaning of section 255 of the Tax Law of the State of New York and as such create or secure no further or new indebtedness other than the principal indebtedness secured by said mortgages, respectively \$400,000.00 in the case of H Street Corporation, and \$800,000.00 in the case of Senvick Corporation."

7. The mortgage referred to in the affidavit dated April 6, 1966, executed by Senvick Corporation to A. J. Armstrong Company, Inc. was recorded in the office of said recording officer on April 6, 1966, in Book 6658, page 281. A mortgage recording tax of \$4,000.00 was paid thereon at recording. The said mortgage secured an indebtedness of \$800,000.00 in accordance with a note of even date. It further contained a provision that

"In addition to the note above mentioned, this mortgage shall secure any and all further loans or indebtedness or obligations owed or to be owed by the Mortgagor to the Mortgagee, however and whenever arising, and whether under this instrument or otherwise, including but not limited to the obligations of the Mortgagor to the Mortgagee under a certain guarantee agreement dated April 6, 1966, given by the Mortgagor to the Mortgagee guaranteeing the obligations of H STREET CORPORATION to the Mortgagee, limited, however, to a continuing liability under such guaranty not in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)."

CONCLUSIONS OF LAW

A. That the mortgage dated April 6, 1966, executed by H Street Corporation to A. J. Armstrong Company, Inc., secured not less than \$500,000.00 consisting of note indebtedness of \$400,000.00 and guaranty liability of \$100,000.00 and in addition thereto further loans or indebtedness or obligations not determinable from the terms of the mortgage and therefore the mortgage secured an indefinite amount within the meaning of section 256 of the Tax Law.

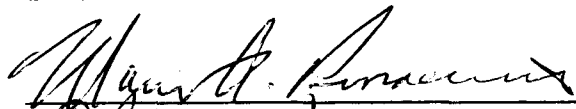
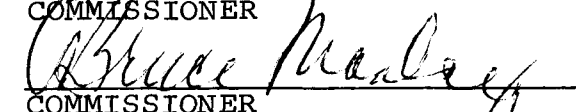
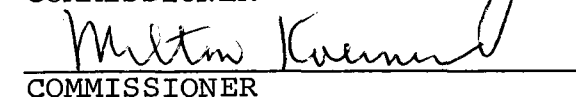
B. That the guaranty liability of \$100,000.00 referred to in the mortgage dated April 6, 1966, executed by H Street Corporation to A. J. Armstrong Company, Inc. did not constitute a supplemental mortgage in accordance with the meaning and intent of section 255 of the Tax Law, and therefore a mortgage recording tax was due on said amount at recording.

C. That the affidavit of Manuel S. Winston, Executive Vice President of H Street Corporation, dated April 6, 1966, constituted a sworn statement limiting the maximum amount secured under any contingency by the mortgage dated April 6, 1966, from H Street Corporation to A. J. Armstrong Company, Inc. to \$500,000.00 and therefore such amount should have been the basis for assessing the mortgage recording tax at recording in accordance with the meaning and intent of section 256 of the Tax Law.

D. That a mortgage recording of \$2,500.00 was due at recording and therefore a balance of \$500.00 is due together with additional tax pursuant to section 258 of the Tax Law at the rate of one-half percent per month or fraction of a month from the date of record.

DATED: Albany, New York
September 26, 1973

STATE TAX COMMISSION


COMMISSIONER

COMMISSIONER

COMMISSIONER