

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of ~~the Petitioner~~ an Instrument Executed  
by  
~~or~~

MICHAEL DUBROFF ASSOCIATES, INC. ET:AL and the AFFIDAVIT OF MAILING  
Application of Empire National Bank  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Mortgage :  
Taxes under Article(s) 11 of the  
Tax Law for the Year(s) or Period(s) with :  
Reference to a Mortgage Recorded 12/8/75.

State of New York  
County of Albany

Bruce Batchelor , 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 8th day of December , 1976, she served the within  
Notice of Determination by (certified) mail upon Michael Dubroff  
Associates, Inc. <sup>Et al</sup> ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Michael Dubroff Associates, Inc.  
25 Renwick Street  
Newburgh, NY

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative~~  
~~of the)~~ 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

8th day of December , 1976

Bruce Batchelor

Just Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ an Instrument Executed

by  
~~an~~  
MICHAEL DUBROFF ASSOCIATES, INC. ET AL and the AFFIDAVIT OF MAILING  
Application of Empire National Bank

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Mortgage :  
Taxes under Article (x) 11 of the :  
Tax Law ~~for the Year (s) or Period (s)~~ with :  
Reference to a Mortgage Recorded 12/8/75

State of New York  
County of Albany

Bruce Batchelor , 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 8th day of December , 1976, she served the within  
Notice of Determination by (certified) mail upon Edward T. and Jean A.  
Sylcox (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Edward T. and Jean A. Sylcox  
Powelton Circle, MD30  
Newburgh, NY

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 Postal Service within the State of New York.

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

Sworn to before me this

8th day of December , 1976.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ an Instrument Executed

by  
~~or~~  
MICHAEL DUBROFF ASSOCIATES, INC. ET:AL and the AFFIDAVIT OF MAILING  
Application of Empire National Bank  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Mortgage :  
Taxes under Article(s) 11 of the  
Tax Law ~~for the Year(s) or Period(s)~~ with:  
Reference to a Mortgage Recorded 12/8/75

State of New York  
County of Albany

Bruce Batchelor , 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 8th day of December , 1976, she served the within  
Notice of Determination by (certified) mail upon Empire National Bank

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Empire National Bank  
135 North Street  
Middletown, NY

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~  
~~of the~~) 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

8th day of December , 1976.

Bruce Batchelor

Janet Back

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ an Instrument Executed

by  
~~ok~~  
MICHAEL DUBROFF ASSOCIATES, INC. ET:AL and the AFFIDAVIT OF MAILING  
Application of Empire National Bank  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Mortgage :  
Taxes under Article(x) 11 of the  
Tax Law ~~for the Year(s) or Period(s)~~ with :  
Reference to a Mortgage Recorded 12/8/75

State of New York  
County of Albany

Bruce Batchelor , 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 8th day of December , 1976 , she served the within  
Notice of Determination by (certified) mail upon Monroe R. Davis, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Monroe R. Davis, Esq.  
Cooke & Davis, Esqs.  
10 Hamilton Avenue, P.O. Box 809  
Monticello, NY 12701  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
of the) 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

8th day of December , 19 76

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~XXXXXX~~ an Instrument Executed

by  
~~or~~

MICHAEL DUBROFF ASSOCIATES, INC. ET:AL and the AFFIDAVIT OF MAILING  
Application of Empire National Bank  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Mortgage :  
Taxes under Article(s) 11 of the  
Tax Law ~~for the Year(s) or Period(s)~~ with:  
Reference to a Mortgage Recorded 12/8/75

State of New York  
County of Albany

Bruce Batchelor , 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 8th day of December , 1976, she served the within  
Notice of Determination by (certified) mail upon Raymond Schwarz  
(interested Party) ~~representative of~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Raymond Schwarz  
Orange County Commissioner of Finance  
Goshen, NY 10924

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 Postal Service within the State of New York.

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

Sworn to before me this

8th day of December , 1976.

Bruce Batchelor

Janet Nash



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 8, 1976

TELEPHONE: (518) ~~437-1210~~

Michael Dubroff Associates, Inc.  
25 Kenwick Street  
Newburgh, NY

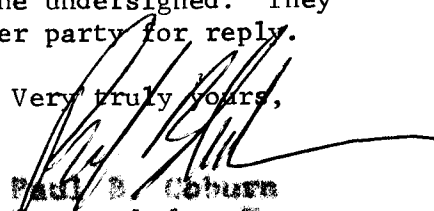
Gentlemen:

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

Please take further notice that pursuant to  
Section(§) **281** 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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

  
Paul D. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of an Instrument Executed	:	
by	:	
MICHAEL DUBROFF ASSOCIATES, INC. ET AL	:	DETERMINATION
and the Application of Empire National Bank to	:	
Review a Determination under Article 11 of the	:	
Tax Law with Reference to a Mortgage Recorded	:	
December 8, 1975.	:	

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Applicant Empire National Bank with its principal office located at 135 North Street in the City of Middletown, New York, has filed an application to review a determination under Article 11 of the Tax Law with reference to a mortgage made by Michael Dubroff Associates, Inc. and Edward T. Sylcox, Sr. and Jean A. Sylcox, his wife, recorded on December 8, 1975. (File No. 13738).

A formal hearing was scheduled before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 29, 1976, at 1:15 P.M. On July 21, 1976, the applicant advised in writing that he desired to waive a formal hearing and to submit the matter to the State Tax Commission upon the documents, correspondence and affidavits contained in the file. The State Tax Commission renders the following determination after due consideration of the entire record.

ISSUE

Whether additional mortgage recording tax is due on the recording of a consolidation and extension agreement securing the principal sum of \$2,353,000.00 which includes therein \$243,000.00 of interest not stated as part of the principal sum of \$2,110,000.00 secured by the three mortgages consolidated by the agreement.

FINDINGS OF FACT

1. On January 24, 1973, Michael Dubroff Associates, Inc. and Edward T. Sylcox and Jean A. Sylcox, his wife, made a mortgage to applicant, Empire National Bank, in the principal sum of \$1,700,000.00, which mortgage was recorded in Liber 1615 of Mortgages at Page 845 in the Office of the Clerk of Orange County on January 24, 1973.

2. On April 29, 1974, Michael Dubroff Associates, Inc. made a mortgage to Highland National Bank of Newburgh in the principal sum of \$350,000.00, which mortgage was recorded in Liber 1651 of Mortgages at Page 411 in the Office of the Clerk of Orange County on May 3, 1974. This mortgage was assigned to Empire National Bank.

3. On November 22, 1974, Michael Dubroff Associates, Inc. made a mortgage to Empire National Bank in the principal sum of \$60,000.00, which mortgage was recorded in Liber 1665 of Mortgages on Page 115 in the Office of the Clerk of Orange County on November 25, 1974.



4. Each of the above three mortgages provided that the mortgage was made to secure the indebtedness of the principal sum with interest thereon. The aggregate principal sum of these three mortgages was \$2,110,000.00.

5. On December 1, 1975, Empire National Bank, the mortgagee, and Michael Dubroff Associates, Inc. Edward T. Sylcox, Sr. and Jean A. Sylcox, his wife, the mortgagors, entered into a consolidation and extension agreement consolidating and extending the terms of the three mortgages described in paragraphs 1 through 3 above. The agreement provides in paragraph 7 thereof, that the principal sum secured is in the amount of \$2,353,000.00.

6. The difference between the aggregate principal sum of the three mortgages, \$2,110,000.00, and the principal sum in the agreement consolidating the three mortgages, \$2,353,000.00 is \$243,000.00 which was attributable to unpaid interest on the three mortgages computed to November 1, 1975.

7. The consolidation and extension agreement was recorded in the Office of the Clerk of Orange County in Book 2024 of Deeds at Page 331 on December 8, 1975, and was accompanied by the affidavit of Monroe R. Davis of the law firm of Cooke and Davis, attorney for applicant, Empire National Bank, which stated that the sum of \$2,353,000.00 does not create or secure any new or further obligation than that secured by the three prior mortgages and requested exemption from further tax under section 255 of the Tax Law.

8. By letter of March 9, 1976, the Miscellaneous Tax Bureau determined that the agreement increased the amount secured by at least \$243,000.00 and instructed the Orange County Clerk to proceed at once to collect the tax and penalty due.

9. On April 6, 1976, applicant requested, by letter, review of the determination pursuant to section 251 of the Tax Law.

CONCLUSIONS OF LAW

A. That the consolidation and extension agreement of December 1, 1975 is an agreement by which the indebtedness secured by a mortgage is increased or added to, and is a mortgage of real property for the purpose of Article 11 of the Tax Law taxable as such upon the amount of such increase or addition pursuant to section 250 of the Tax Law.

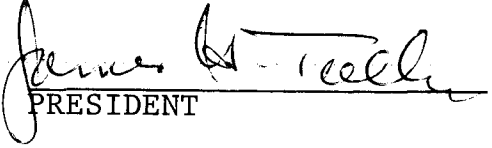
B. That the consolidation and extension agreement of December 1, 1975 constitutes a supplemental mortgage within the meaning and intent of section 255 of the Tax Law; that the agreement is not subject to taxation unless it creates or secures a new or further indebtedness or obligation other than the principal indebtedness secured by the recorded primary mortgages, in which case tax is imposed on the further indebtedness.

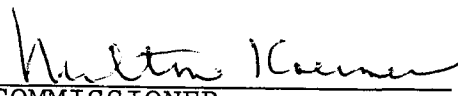
C. That the principal debt, upon which the mortgage recording tax is measured pursuant to section 253 of the Tax Law, secured by the agreement of December 1, 1975, includes further indebtedness of \$243,000.00 other than that secured by the prior recorded primary mortgages, and that the taxability of this further indebtedness is unaltered by the fact that it represents unpaid interest on the primary mortgages.

D. That the application of Empire National Bank is denied.

DATED: Albany, New York  
December 8, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER