

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
LONG ISLAND LIGHTING COMPANY	:	DETERMINATION
to Review a Determination under Article 11 of the	:	
Tax Law with reference to an Instrument recorded	:	
December 23, 1971.	:	

Applicant, Long Island Lighting Company, has filed an application to review a determination under Article 11 of the Tax Law with reference to an instrument recorded December 23, 1971.

Upon notice to all interested parties 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 April 26, 1973, at 9:15 A.M. and on June 21, 1973, at 9:15 A.M. Applicant appeared by Edward M. Barrett, Esq. (Herbert M. Leiman, Esq. of counsel). The Miscellaneous Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq. and Francis X. Boylan, Esq. of counsel). The City of New York appeared by Norman Redlich, Esq. (Issac C. Donner, Esq. and Arnold Fox, Esq. of counsel). The County of Suffolk appeared by George W. Percey, Esq. (Stanley Corwin, Esq. of counsel).

ISSUE

Should the computation of the mortgage tax due from Long Island Lighting Company to the City of New York pursuant to section 253(a) of the Tax Law in connection with an instrument recorded in December 23, 1971, be made by application

of the New York State Board of Equalization and Assessment equalization rates to the assessment roll valuations of the applicant's properties?

FINDINGS OF FACT

1. Applicant, Long Island Lighting Company, is a domestic corporation duly incorporated under the Transportation Corporations Law of the State of New York, having its principal office at 250 Old Country Road, Mineola, Nassau County, New York.

2. On December 23, 1971, applicant, Long Island Lighting Company, recorded its Eighteenth Supplemental Indenture dated as of December 1, 1971, in the office of the County Clerk of Nassau County in Liber 8889 of Mortgages, Page 237; in the Office of the County Clerk of Suffolk County in Liber 6236 of Mortgages, Page 195; in the Office of the Registrar of Suffolk County as Document No. 198008; and in the Office of the Register of the City of New York for the County of Queens as Document No. 47521 in Reel 535 of Records, Page 1618.

3. The Eighteenth Supplemental Indenture, between applicant, Long Island Lighting Company, and First National City Bank, successor by merger to First National City Trust Company (formerly City Bank Farmers Trust Company), a national banking association incorporated and existing under the laws of the United States, as Trustee, was the eighteenth supplemental indenture to an Indenture of Mortgage and Deed of Trust dated as of September 1, 1951, between applicant, Long Island Lighting Company, and City Bank Farmers Trust Company, as Trustee.

4. Applicant, Long Island Lighting Company, paid, on December 23, 1971, the date of recording said Eighteenth Supplemental Indenture, the sum of \$385,200.00, representing mortgage taxes acknowledged by said applicant, Long Island Lighting

Company to be due upon the recording of said Eighteenth Supplemental Indenture, to the County Clerk of the County of Nassau, and thereafter on April 23, 1972, paid to said County Clerk of the County of Nassau, the additional sum of \$19,514.82, representing additional mortgage taxes claimed by said County Clerk of the County of Nassau to be due upon the recording of said Eighteenth Supplemental Indenture, together with the sum of \$390.28 representing the penalty due on said additional mortgage taxes. In all it has paid \$404,714.82 in mortgage taxes plus penalties.

5. The sum of \$19,514.82, together with the sum of \$390.28, in all the sum of \$19,905.10, was determined to be due as a result of the apportionment of the real properties covered by said Eighteenth Supplemental Indenture on the basis of the assessments of said properties on the assessment-rolls of the City of New York, the County of Nassau and the several Towns in the County of Suffolk exactly as the said assessments appear on said assessment-rolls and not, upon the basis of the relative assessments of said properties as the same appear on said assessment-rolls after application of the state equalization rates as determined by the State Board of Equalization and Assessment.

6. The Eighteenth Supplemental Indenture was recorded to secure an additional indebtedness of \$50,000,000. The mortgage taxes upon this additional indebtedness, incurred at the time of recording the Eighteenth Supplemental Indenture, were computed by the Miscellaneous Tax Bureau as follows:

Pursuant to N. Y. Tax Law	
§ 253, Subdivision 1	
(50¢/\$100 or major fraction thereof)	\$250,000.00
Pursuant to N. Y. Tax Law	
§ 253, Subdivision 2	
(25¢/\$100 or major fraction thereof)	125,000.00
Pursuant to N. Y. Tax Law	
§ 253-a, Subdivision 1	<u>29,714.82</u>
	<u>\$404,714.82</u>

In this proceeding, the applicant, Long Island Lighting Company, seeks to recover only a portion of the taxes computed pursuant to Tax Law § 253-a, Subdivision 1, in the sum of \$19,514.82, representing an alleged overpayment of mortgage taxes, together with the interest and penalties on said sum. It does not seek the refund of any portion of the \$250,000 collected by the Nassau County Clerk pursuant to Tax Law § 253, Subdivision 1, which are to be distributed by the Nassau County Clerk to the County Treasurer of Nassau County pursuant to Tax Law § 261 and the recording officers of Suffolk and Queens Counties pursuant to Tax Law § 260. However, if it is entitled to a refund of the § 253-a moneys, then the several cities, towns and villages entitled to the § 253, Subdivision 1 moneys may, as a consequence, receive allotments thereof which will differ from those which would be made if no refund is to be made. Nor does it seek the refund of any portion of the \$125,000 collected by the Nassau County Clerk pursuant to Tax Law § 253, Subdivision 2, which is to be distributed by the Nassau County Clerk to the Metropolitan Transportation Authority pursuant to Tax Law § 261, Subdivision 1.

7. The properties of applicant, Long Island Lighting Company, used as security for the mortgage at the time of the recording of the Eighteenth Supplemental Indenture, the real property tax assessments on the respective assessment rolls of the towns and cities, the New York State equalization rates in effect at the time of recording and the equalized value of said properties were as follows:

1971/72 Assessed Valuations

	<u>Real Property</u>	<u>Special Franchise</u>	<u>Total</u>	<u>Equalization Rate</u>	<u>Equalized Value</u>
<u>Nassau County</u>					
Town of Hempstead	\$42,894,290	\$38,686,329	\$ 81,580,619	25%	\$326,322,476
Town of North Hempstead	30,807,945	13,632,314	44,440,259	25	177,761,036
Town of Oyster Bay	15,809,615	13,506,584	29,316,199	25	117,264,796
City of Glen Cove	408,215	1,361,818	1,770,033	28	6,321,546
City of Long Beach	<u>1,025,900</u>	<u>2,745,690</u>	<u>3,771,590</u>	31	<u>12,166,419</u>
Total Nassau County	\$90,945,965	\$69,932,735	\$160,878,700		\$639,836,273
<u>Suffolk County</u>					
Town of Babylon	1,669,205	4,960,681	6,629,886	17	38,999,329
Town of Brookhaven	18,164,875	4,970,016	23,134,891	14	165,249,221
Town of Easthampton	1,232,970	1,356,623	2,589,593	21	12,331,395
Town of Huntington	19,274,575	4,757,265	24,031,840	14	171,656,000
Town of Islip	4,361,240	7,447,969	11,809,209	21	56,234,329
Town of Riverhead	992,800	1,125,391	2,118,191	22	9,628,141

<u>Suffolk County</u>	<u>Real Property</u>	<u>Special Franchise</u>	<u>Total</u>	<u>Equalization Rate</u>	<u>Equalized Value</u>
Town of Shelter Island	7,900	147,982	155,882	30	519,607
Town of Smithtown	1,308,040	3,093,806	4,401,846	20	22,009,230
Town of Southampton	1,691,550	2,511,517	4,203,067	19	22,121,405
Town of Southold	<u>713,700</u>	<u>989,591</u>	<u>1,703,291</u>	23	<u>7,405,613</u>
Total Suffolk County	<u>49,416,855</u>	<u>31,360,841</u>	<u>80,777,696</u>		<u>506,154,270</u>
City of New York	<u>23,937,800</u>	<u>8,659,834</u>	<u>32,597,634</u>	67	<u>48,653,185</u>
TOTAL LILCO	<u>\$164,300,620</u>	<u>\$109,953,410</u>	<u>\$274,254,030</u>		<u>\$1,194,643,728</u>

CONCLUSIONS OF LAW

A. That section 253-a(1) of the Tax Law authorizes cities having a population of one million or more to adopt a local law imposing an additional mortgage tax of 1/2 of 1%. Section 253-a(3) provides that where the real property covered by a mortgage subject to the tax imposed by section 253-a(1) is situated within New York State, but within and without a city imposing such a tax, "the amount of tax due and payable to such city shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty which concerns real property situated in two or more counties". The City of New York adopted Local Law No. 39 for the year 1971 and Local Law No. 18 for the year 1972 (Title W of the New York City Charter and Administrative Code) in order to impose and apportion said

additional mortgage tax where the mortgaged properties were located within the State, but within and without the City of New York. The said local laws provided that they were to take effect August 1, 1971. Applicant, Long Island Lighting Company's Eighteenth Supplemental Indenture recorded December 23, 1971, was secured by real property located within the State of New York, but within and without the City of New York and, therefore, the provisions of section 260 of the Tax Law have to be applied to determine the proper apportionment of said additional mortgage tax.

B. That the first paragraph of section 260 of the Tax Law provides:

"When the real property covered by a mortgage is situated in more than one tax district, the State Tax Commission shall apportion the tax paid on said mortgage between the respective tax districts upon the basis of the relative assessments of such real property as the same appear on the last assessment rolls."

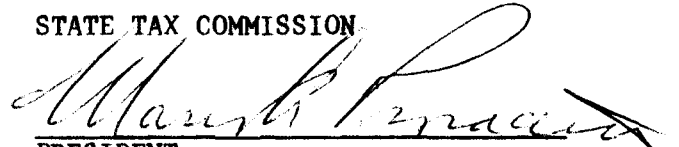
The language "upon the basis of the relative assessments . . . as they appear on the last assessment role" can only mean in proportion to the assessed valuations of the properties as they actually appear on the respective assessment rolls of the cities, towns and villages concerned. The assessments appearing on the assessment rolls of said municipalities are clearly the local assessed values without consideration being given to the equalized values which are established by the application of the State equalization rates promulgated by the State Board of Equalization and Assessment. Therefore, in the instant case, the apportionment made to the various tax districts within the State where the properties covered by the Eighteenth Supplemental Indenture were located, with reference to and in proportion to the assessed values of said properties in the various districts, was clearly in accord with the statutory requirements.

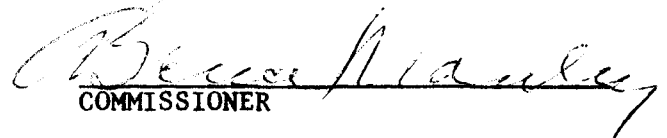
C. That the constitutionality of the laws of the State of New York and of the City of New York are presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that section 253-a of the Tax Law and section W46-3.0 of the New York City Charter and Administrative Code are constitutional to the extent that they relate to the imposition and apportionment of the additional mortgage tax which is the subject of this proceeding.

D. That the application of Long Island Lighting Company is denied.

DATED: Albany, New York
January 28, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER