



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

*mortgage*

August 26, 1977

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

Rednow Realty Corp.  
437 Madison Avenue  
New York, New York 10022

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(x) 251 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 Months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

PAUL B. COBURN  
Supervising Tax  
Hearing Officer

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
REDNOW REALTY CORP. : DETERMINATION  
to Review a Determination under Article 11 :  
of the Tax Law with Reference to an :  
Instrument Recorded January 17, 1974. :  
:

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Applicant, Rednow Realty Corp., with its principal office at 437 Madison Avenue, New York, New York 10022, filed an application to review a determination under Article 11 of the Tax Law with reference to a remodified mortgage made by Rednow Realty Corp., which mortgage was recorded in the Office of the City Register of New York County on January 17, 1974. (File No. 00487).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 15, 1976 at 3:00 P.M. The applicant appeared by Kahr & Spitzer & Howard, (Joseph E. Low, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq., of counsel). The City of New York appeared by W. Bernard Richland, Esq., (Arnold Fox, Esq. of counsel).

ISSUE

Whether additional mortgage recording tax is due on the recording of a remodified mortgage where (1) the initial mortgage was to secure payment of an indebtedness of an amount

not to exceed \$12,000,000.00, (2) a modified mortgage was subsequently recorded, by an assignee of the mortgagee, wherein the maximum indebtedness which could be secured was \$10,000,000.00, and (3) a remodified mortgage was recorded wherein the maximum indebtedness was \$12,000,000.00.

FINDINGS OF FACT

1. Applicant, Rednow Realty Corp., executed a mortgage to Precision Dynamics Corporation on July 27, 1971, to secure the payment of an indebtedness of an amount not to exceed \$12,000,000.00 (or so much of that sum as may be advanced), to be repaid in accordance with the terms of a building mortgage loan note of the same date. This mortgage was recorded in the Office of the City Register of New York County on July 28, 1971 in Reel 212, Page 768. The mortgage recording tax on \$12,000,000.00, the maximum amount which could be secured by the mortgage, was duly paid.

2. The mortgage described in Finding of Fact "1", supra, was subsequently assigned to Chemical Bank, a New York banking corporation.

3. On December 10, 1971, Chemical Bank, the mortgagee (pursuant to the assignment), and Rednow Realty Corp., the mortgagor, executed a "Modified Mortgage," which was recorded in the Office of the City Register of New York County in Reel 225, Page 1, on December 15, 1971. No mortgage recording tax was paid. This agreement provided, in part, that:

"Mortgagee is the owner and holder of (i) a mortgage, dated July 28, 1971 (the Prior Mortgage) made by Mortgagor to Precision Dynamics Corporation, a New York Corporation (Precision), in the principal sum of \$12,000,000.00 and recorded in the Office of the Register of the City of New York, New York County, on July 28, 1971, in Reel 212, Page 768, covering the leasehold estate and other properties described therein, and (ii) the note (the Prior Note) secured by the Prior Mortgage."

"The Prior Note evidences advances made or to be made to Mortgagor pursuant to a building loan agreement dated July 27, 1971 (the Original Loan Agreement), between Precision, as lender, and Mortgagor, as borrower, and filed in the Office of the Clerk of New York County on July 28, 1971."

"By agreement dated the date hereof, between Mortgagee, as lender, and Mortgagor, as borrower (intended to be filed in said Clerk's Office immediately prior to the recording of this Mortgage), the Original Loan Agreement has been modified and restated (the Original Loan Agreement, as so modified and restated, being hereinafter called the Loan Agreement), to provide, among other things, for the making of a loan (the Loan) by Mortgagee to Mortgagor in the maximum principal sum of \$10,000,000.00, or so much thereof as may be advanced pursuant to the Loan Agreement."

"Mortgagor and Mortgagee have agreed to modify and extend the terms of the Prior Mortgage and the Prior Note, and to spread the lien of the Prior Mortgage to the extent necessary to cover all the Mortgaged Property (as hereinafter defined), in the manner hereinafter set forth."

and

"The terms, provisions, covenants and conditions of the Prior Mortgage and the Prior Note are hereby modified to conform to, and are superseded by, the terms, provisions, covenants and conditions of this Mortgage, except only that the execution and delivery of this Mortgage shall not in any way extinguish the indebtedness (or any part thereof) evidenced by the Prior Note and incurred in Connection with, and secured by, and nothing herein contained shall in any way impair the lien of, the Prior Mortgage."

and

"...The performance and observance of all of the terms, provisions, covenants and conditions of this Mortgage, and to effect and further confirm the grant, assignment and mortgage of the leasehold estate and other properties described in the Prior Mortgage, the parties hereto have executed and delivered this Mortgage and do hereby agree that the Prior Mortgage and the Prior Note, and each and every part thereof shall be, and they hereby are, amended to read henceforth in their entirety, as follows:"

On Page 9 of the "Modified Mortgage," under the heading "Payment of Principal and Interest," reference is made to the principal sum of \$10,000,000.00 (or so much thereof as may be advanced) and to the interest rates and times for payment.

4. On January 15, 1974, a "remodified Mortgage" was executed by Rednow Realty Corp. and Chemical Bank, which mortgage was recorded in the Office of the Register of New York County on January 17, 1974, in Reel 303, Page 265.

This agreement provided in part, that:

"The Original Loan Agreement provided for a loan (the Building Loan) from the lender to the borrower, in the maximum principal sum of Twelve Million Dollars (\$12,000,000.00), and the Loan Modification provided for (among other things) advances of the Principal of the Building Loan not to exceed the total sum of Ten Million Dollars (\$10,000,000.00). The total Principal sum of Ten Million Dollars (\$10,000,000.00) has been advanced by Mortgagee to Mortgagor as the Building Loan, pursuant to the Modified Loan Agreement, and such sum is now outstanding on the Note and under the Modified Mortgage."

"At the request of Mortgagor, and by an agreement, dated the date hereof (the Loan Remodification), between Mortgagee, as lender, and Mortgagor, as borrower (intended to be filed in the Clerk's Office prior to the recording of this Remodified Mortgage), the

Modified Loan Agreement has been remodified (as so remodified, being called the Remodified Loan Agreement) to provide for (among other things) an increase in the maximum amount of the total advances of the Principal of the Building Loan, to Twelve Million Dollars (\$12,000,000.00), the sum secured by the Original Mortgage, or so much thereof as may be advanced pursuant to the Remodified Loan Agreement."

"Mortgagor has requested Mortgagee to agree to (a) increase to Twelve Million Dollars (\$12,000,000.00) (the sum secured by the Original Mortgage) the maximum amount of the total advances of the Principal of the Building Loan, (b) extend the Maturity Date of the Note, and (c) reduce the rate of Interest payable during the period of such extension of the Maturity Date. Mortgagee is willing to so agree, but only upon the terms and conditions hereinafter stated."

and

"Except only as specifically and expressly remodified by this Agreement, all the terms, covenants, provisions and conditions of the Modified Mortgage and the Note shall continue in full force and effect, and the Modified Mortgage and Note, as so remodified, are hereby affirmed and ratified."

"The execution and delivery of this Agreement shall not in any way extinguish, or be deemed to extinguish the indebtedness

or Debt (or any part thereof) evidenced by the Note and secured by the Original Mortgage or Modified Mortgage. Nothing contained in this Agreement shall in any way impair, or be deemed to impair the lien of the Original Mortgage or the Modified Mortgage."

5. An affidavit under section 255 of the Tax Law, sworn to by Joseph E. Low, President of Rednow Realty Corp. on January 15, 1974, requested that the "Remodified Mortgage," be declared exempt from mortgage recording tax.

6. On January 15, 1974, Chemical Bank assigned the Remodified Mortgage to Bankers Life and Casualty Company which paid \$12,000,000.00 therefor. Simultaneously, Bankers Life and Casualty Company advanced an additional \$5,500,000.00 to Rednow Realty Corp., and that corporation executed a mortgage in the principal sum of \$5,500,000.00, upon which the mortgage recording tax was duly paid. Then the two mortgages were consolidated pursuant to a Consolidation and Extension Agreement between Rednow Realty Corp. and Bankers Life and Casualty Company dated January 15, 1974, which agreement was duly recorded in the Office of the Register of New York County in Reel 303, Page 204. An affidavit under section 255 of the Tax Law, sworn to by Joseph E. Low on January 15, 1974, requested that the Consolidation and Extension Agreement (and the assignment of certain space leases) be declared exempt pursuant to section 255 of the Tax Law.



7. By letter of February 4, 1975, the Office of the City Register of New York County was advised by the Miscellaneous Tax Bureau that the Modified Mortgage executed December 10, 1971, reduce the principal sum which could be advanced to \$10,000,000.00, that the Remodified Mortgage executed January 15, 1974, increased that amount to \$12,000,000.00 once again; and that such increase constituted a further advance of \$2,000,000.00 not entitled to exemption pursuant to section 255. The Bureau concluded that an additional \$25,000.00 was due, plus penalty, on the recording of the modified mortgage and that the provisions of section 258 of the Tax Law should be applied until tax and penalty have been paid.

CONCLUSIONS OF LAW

A. That section 253 of the Tax Law imposes a tax on the recording of a mortgage on real property situated in New York, based on the amount of principal debt or obligation which is secured or which, under any contingency, may be secured at the date of execution of the mortgage or at any time thereafter. (underlining supplied for emphasis).

B. That the Remodified Mortgage of January 15, 1974 constitutes a supplemental mortgage within the meaning and intent of section 255 of the Tax Law, and that as such it is not subject to a tax on recording unless it creates or secures a new or further indebtedness or obligation other than the principal indebtedness secured by the recorded primary mortgage, in which case tax is imposed on the further indebtedness.

C. That the Modified Mortgage of December 10, 1971, expressly provided that the \$2,000,000.00 previously available for advances was no longer available and could no longer be required to be advanced, and thus did not represent the principal indebtedness which is or under any contingency should be secured by the recorded primary mortgage. (Said modified mortgage now being, in effect, the primary mortgage) (Woodmere Knolls, Inc. v. Procaccino 52 A.D.2d 979).

D. That the Remodified Mortgage of January 15, 1974 increased the \$10,000,000.00 available for advances pursuant to the modified mortgage to \$12,000,000.00; and that this increase of \$2,000,000.00 constitutes "new or further indebtedness", since the parties, by execution of the Modified Mortgage of December 10, 1971, had terminated the availability of or extinguished \$2,000,000.00 of the maximum principal amount which could have been advanced pursuant to the initial mortgage.

E. That the provision in the Modified Mortgage and the Remodified Mortgage regarding the execution and delivery of those mortgages, extinguishing neither indebtedness evidenced by prior notes nor impairing the lien of the prior mortgage, does not bear on the principal amount which may be advanced pursuant to either of the instruments and which is the basis for the tax on recording the mortgage (Tax Law §253, supra).

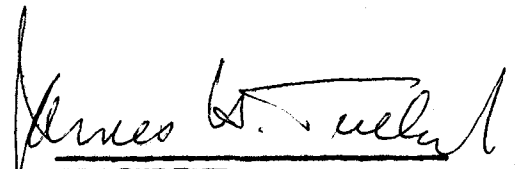
F. That the principal debt secured by the Remodified Mortgage of January 15, 1974, (upon which the mortgage recording tax is measured) includes further indebtedness of \$2,000,000.00 other than that secured by the prior recorded Modified Mortgage.

G. That the application of Empire National Bank to review the determination with reference to the mortgage of January 15, 1974, recorded on January 17, 1974, is denied; and that the mortgage recording tax of \$25,000.00 is due, plus a penalty of 1/2% of said tax for each month the tax remains unpaid, pursuant to section 258 of the Tax Law.

DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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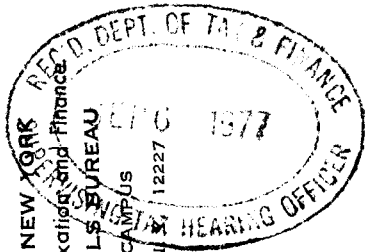
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Rednow Realty Corp.  
437 Madison Avenue  
New York, New York 10022

*W. J. J. J.*



MISCELLANEOUS TAX BUREAU  
ALBANY, NEW YORK

RECEIVED  
DEPARTMENT OF  
TAXATION & FINANCE  
SEP 9 1977

TAX APPEALS BUREAU  
SEP 20 1977  
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