

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
STANLEY H. STEVENS AND
ROSE STEVENS, HIS WIFE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Mortgage Recording :
Taxes under Article(s) 11 of the :
Tax Law for the Year(s) ~~1976~~ ~~1977~~ :
Recorded on April 20, 1976

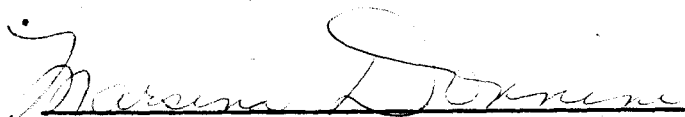
State of New York
County of Albany

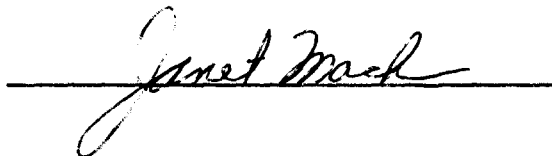
Marsina Donnini, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of August, 1977, she served the within
Notice of Determination by (certified) mail upon Stanley H. Stevens
and Rose Stevens
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Stanley H. Stevens
769 Onderdonk Avenue
Ridgewood, New York
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

16th day of August, 1977


Marsina Donnini


Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
STANLEY H. STEVENS AND
ROSE STEVENS, HIS WIFE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Mortgage Recording :
Taxes under Article (8) 11 of the :
Tax Law for the ~~year(s) or Period(s)~~ :
Recorded on April 20, 1976

State of New York
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within
Notice of Determination by (certified) mail upon First American
Title Insurance Company
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: First American Title Insurance Company
1501 Franklin Avenue
Mineola, New York 11501
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

16th day of August, 1977

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STANLEY H. STEVENS AND
ROSE STEVENS, HIS WIFE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Mortgage Recording :
Taxes under Article(s) 11 of the :
Tax Law for the ~~XXXXXX~~ Period ~~(X)~~ :
Recorded on April 20, 1976

State of New York
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within
Notice of Determination by (certified) mail upon The Prudential
Mortgage Co., Inc.
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: The Prudential Mortgage Co., Inc.
476 Elmont Road
Elmont, New York
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

16th day of August, 1977

Marsina L. Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
STANLEY H. STEVENS AND
ROSE STEVENS, HIS WIFE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Mortgage Recording :
Taxes under Article(s) 11 of the :
Tax Law for the ~~Year(s) or Period(s)~~ :
Recorded on April 20, 1976

State of New York
County of Albany

Marsina Donnini, 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 16th day of August, 19 77, she served the within
Notice of Determination by (certified) mail upon Mr. Adrian P Burke

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Adrian P. Burke
New York City Corporation Counsel
Municipal Building
New York, NY 10007
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)~~
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

16th day of August, 19 77

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
STANLEY H. STEVENS AND
ROSE STEVENS, HIS WIFE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Mortgage Recording :
Taxes under Article (8) 11 of the :
Tax Law for the Year (1977) Period (1977) :
Recorded on April 20, 1976

State of New York
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within
Notice of Determination by (certified) mail upon Matthew R. Dwyer
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Matthew R. Dwyer
Register - New York County
31 Chambers Street
New York, NY 10007
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) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of) petitioner.

Sworn to before me this

16th day of August, 1977.

Marsina Donnini

Janet Mach



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
August 16, 1977

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

Mr. and Mrs. Stanley H. Stevens
769 Onderdonk Avenue
Ridgewood, New York

Dear Mr. and Mrs. Stevens:

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(9) **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

In the Matter of an Instrument Executed

by

STANLEY H. STEVENS and
ROSE STEVENS, his wife,

DETERMINATION

and the Application of First American Title:
Insurance Company of New York for a Refund
of Mortgage Recording Tax Paid Pursuant to :
Article 11 of the Tax Law with Reference to :
a Mortgage Recorded on April 20, 1976. :

Applicant, First American Title Insurance Company of New
York, with its offices located at 1501 Franklin Avenue, Mineola,
New York 11501, filed an application for refund under section
263 of Article 11 of the Tax Law with reference to a mortgage
made by Stanley H. Stevens and Rose Stevens, his wife, recorded
on April 20, 1976. (File No. 15876)

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 April 20, 1977 at 2:45 P.M.
The applicant appeared by Joseph N. Friedman, Esq. The Miscel-
laneous Tax Bureau appeared by Peter Crotty, Esq. (Richard
Kaufman, Esq., of counsel). The City of New York appeared by W.
Bernard Richland, Esq., (Arnold Fox, Esq. of counsel).

ISSUE

Whether the applicant is entitled to a refund of tax paid on the recording of a supplemental mortgage where no statement under oath is filed with the recording officer at the time of recording.

FINDINGS OF FACT

1. On February 10, 1976, a mortgage was executed by Stanley H. Stevens and Rose Stevens, his wife, to the Prudential Mortgagee Co., Inc. and recorded in the Office of City Register, Queens County, on February 18, 1976, in Reel 890 at Page 420. Mortgage recording tax of \$558.75 was duly paid.

2. On April 12, 1976, a mortgage, which stated therein that the instrument was a correction mortgage intended to correct the mortgage described in Finding of Fact "1" above, in that the premises were improved by a two family and not a one family dwelling, was executed by Stanley H. Stevens and Rose Stevens, his wife, to The Prudential Mortgagee Co., Inc. This mortgage was recorded on April 20, 1976 in the Office of City Register, Queens County, in Reel 902 at Page 1249. A mortgage recording tax of \$558.75 was paid. No affidavit pursuant to section 255 of the Tax Law was filed at the time of recording.

3. A June 1, 1976 letter from First American Title Insurance Company of New York requested that the \$558.75 paid on the recording of the mortgage described in Finding of Fact "2", above, be refunded in that it was erroneously paid on a correction mortgage.

4. The Miscellaneous Tax Bureau, by letter of July 12, 1976, advised First American Title Insurance Company of New York that the tax collected as described in the June 1, 1976 letter was not erroneously collected and that the recording officer was obligated to collect the tax in the absence of the filing of a statement under oath requesting exemption.

CONCLUSIONS OF LAW

A. That the correction mortgage of April 12, 1976 constitutes a supplemental mortgage within the meaning and intent of section 255 of the Tax Law; that such an instrument is not subject to taxation where such exemption is claimed and a statement under oath of the facts on which such claim for exemption is based is filed with the recording officer at the time of the recording of the supplemental mortgage.

B. That the failure to present the statement under oath detailing the facts upon which the exemption from mortgage recording tax is requested made it imperative for the recording

officer to collect the tax if the mortgage was to be recorded (Tax Law §258).

C. That the determination of the recording officer is reviewable by the Tax Commission pursuant to section 255 of the Tax Law.

D. That the statement under oath required by section 255 is a document separate and apart from the instrument sought to be recorded, and that explanations contained in the mortgage instrument which explain the basis therefor do not meet the statutory requirement of a statement under oath.

E. That the recording officer did not erroneously collect the mortgage recording tax on the correction mortgage recorded on April 20, 1976.

F. That the Tax Commission, pursuant to section 263 of the Tax Law, in the absence of an erroneous collection by a recording officer (other bases not pertinent here exist for a refund), cannot direct the recording officer to refund the tax paid herein.

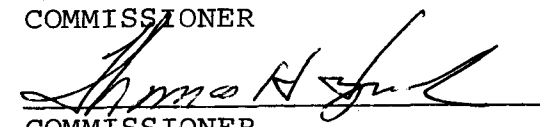
G. That the application of First American Title Insurance Company of New York is denied.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
August 16, 1977

mortgage

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

Mr. and Mrs. Stanley H. Stevens
769 Onderdonk Avenue
Ridgewood, New York

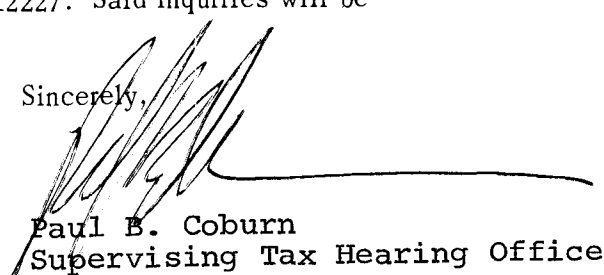
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Sincerely,


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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STANLEY H. STEVENS and
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E. That the recording officer did not erroneously collect the mortgage recording tax on the correction mortgage recorded on April 20, 1976.

F. That the Tax Commission, pursuant to section 263 of the Tax Law, in the absence of an erroneous collection by a recording officer (other bases not pertinent here exist for a refund), cannot direct the recording officer to refund the tax paid herein.

G. That the application of First American Title Insurance Company of New York is denied.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

FORMAL HEARING

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

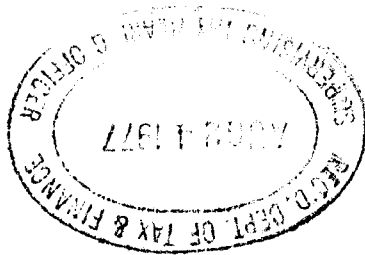
STATE CAMPUS

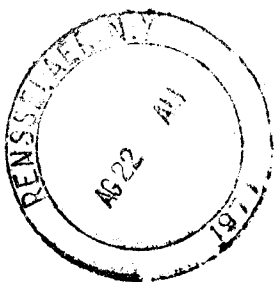
ALBANY, N. Y. 12227

Mr. and Mrs. Stanley H. Stevens
769 Onderdonk Avenue
Ridgewood, New York

RECEIVED
TAX APPEALS BUREAU
JAN 11 1977

Mr. and Mrs. Stanley H. Stevens

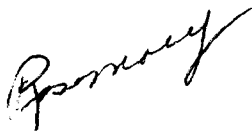




DEPARTMENT OF TAXATION AND FINANCE
MISCELLANEOUS TAX BUREAU

To Art Maxwell

The attached request came from Vi Walker in Tax Appeals. As it seemed to be in regard to a Mortgage Tax case, perhaps you would have a more recent address for the taxpayer.

A handwritten signature in dark ink, appearing to read "F. G. Hicks", written in a cursive style.

From Frederick G. Hicks

RECEIVED
DEPARTMENT OF
TAXATION & FINANCE
SEP 19 1977
MISCELLANEOUS TAX BUREAU
ALBANY, NEW YORK

RECEIVED
DEPARTMENT OF
TAXATION & FINANCE
SEP 9 1977
MISCELLANEOUS TAX BUREAU
ALBANY, NEW YORK

