

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ali, Gerber, Pappas & Cox, P.C. : AFFIDAVIT OF MAILING
to Review a Determination under Article 11 of the :
Tax Law with Reference to an Instrument Recorded :
on July 6, 1979. :

State of New York
County of Albany

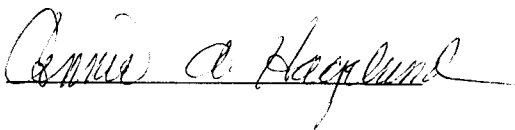
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon Ali, Gerber, Pappas & Cox, P.C., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

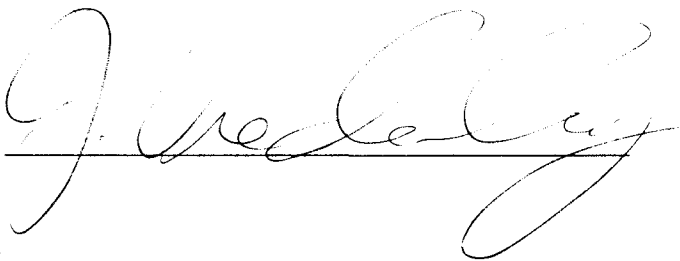
Ali, Gerber, Pappas & Cox, P.C.
305 Gridley Bldg.
Syracuse, NY 13202

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
26th day of March, 1982.





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Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon James H. Medcraf the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James H. Medcraf
103 E. Water St., Gridley Bldg.
Syracuse, NY 13202

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
26th day of March, 1982.

Carmie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon Donald Henderson & Terri J. Siegel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald Henderson & Terri J. Siegel
110 Butler Street
Syracuse, New York 13210

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
26th day of March, 1982.

Cornie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon Bank of New York the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bank of New York
48 Wall Street
New York, 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
26th day of March, 1982.

Cornie R. Haglund

J. Vredenburg

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State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon Anthony R. Floreck the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Anthony R. Floreck
Onondaga County Commissioner of Finance
Court House Building
Syracuse, New York 13202

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
26th day of March, 1982.

Carmie D. Haglund

J. Vredenburg

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County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of March, 1982, he served the within notice of Decision by certified mail upon Arthur Maxwell the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Arthur Maxwell
Mortgage & Real Estate Transfer
Tax Unit
Room 403, 4th Floor
Building #9, State Campus
Albany, New York 12227

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
26th day of March, 1982.

James O. Hagopian

J. Vredenburg

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

March 26, 1982

Ali, Gerber, Pappas & Cox, P.C.
305 Gridley Bldg.
Syracuse, NY 13202

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representatives:
James H. Medcraf
103 E. Water St., Gridley Bldg.
Syracuse, NY 13202

Bank of New York
48 Wall St.
New York, New York

Donald Henderson & Terri J. Siegel
110 Butler Street
Syracuse, New York 13210

Mr. Arthur Maxwell
Mortgage & Reals Estate Transfer
Tax Unit
Room 403, 4th Floor
Building #9, State Campus
Albany, New York 12227

Mr. Anthony R. Floreck
Onondaga County Comm. of Finance
Court House Building
Syracuse, New York 13202

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ALI, GERBER, PAPPAS & COX, P.C.
for Review of a Determination under Article 11
of the Tax Law with Reference to an Instrument
Recorded on July 6, 1979.

DECISION

Petitioner, Ali, Gerber, Pappas & Cox, P.C., 305 Gridley Building, Syracuse, New York 13202, filed a petition to review a determination under Article 11 of the Tax Law with reference to an instrument recorded July 6, 1979 (File No. 28822).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on May 1, 1981 at 10:30 A.M. Petitioner appeared by James H. Medcraf, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a refund of mortgage tax paid in the amount of \$375.00.

FINDINGS OF FACT

1. On June 6, 1979, a mortgage from Donald Henderson and Terri J. Siegel, his wife, to the Bank of New York was filed in the Onondaga County Clerk's Office in Book 2772 of Mortgages at page 265. The mortgage tax of \$375.00 was paid. Thereafter, on July 6, 1979, a corrective mortgage from and to the identical parties was filed in the Onondaga County Clerk's Office in Book 2786 of Mortgages at page 308. The closing attorney desired a change in the legal

description of the original mortgage, i.e., the deletion of the following at the end of Schedule "A" of the first mortgage (the description of the property):

"and being the same premises conveyed by warranty deed with lien covenant by Brewster C. Doust to Brewster C. Doust and Ruth P. Doust, his wife, dated November 12, 1959 and recorded on November 13, 1959 in Book of Deeds 1976 at Page 216 & c."

2. Petitioner, a law firm, inadvertantly paid an additional \$375.00 for filing the corrective mortgage. The first mortgage was not discharged and no additional monies were loaned in connection with the corrective mortgage. At the time of filing no claim for exemption from the mortgage tax was made to the recording officer.

3. On September 18, 1979, an affidavit pursuant to section 255 of the Tax Law was filed in the Onondaga County Clerk's Office which set forth the facts stated in Finding of Fact "1" regarding the filing of the corrective mortgage.

4. Ronald J. Crowley, Deputy County Attorney of Onondaga County, by affidavit, acknowledged that after examining the records of the Henderson-Siegel mortgages, the amount of \$375.00 had been paid twice, and that the second recording was for the purpose of correcting the first mortgage and that both mortgages were the same. He consented on behalf of the County to a refund to petitioner for the erroneous second payment of \$375.00.

CONCLUSIONS OF LAW

A. That section 263 of the Tax Law provides in part:

"Whenever a duly verified application for a refund of mortgage taxes, erroneously collected by a recording officer, or erroneously paid more than once upon the same mortgage or mortgages... is made to the tax commission it shall be the duty of such commission to determine the amount that has been so collected and, after audit thereof by the comptroller, shall make an order directing such recording officer to refund the amount so determined from mortgage tax moneys in his hands...to the party entitled to receive it...". (The underscored material was added by L. 1979 Ch. 97, sec. 1, eff. May 14, 1979.)

B. That a memorandum of Senator Roy M. Goodman in support of L. 1979 Ch.

97 reads as follows:

"Tax Law §263. The purpose of this bill is to permit refunds of the tax on mortgages in cases where it has erroneously been paid more than once. It amends §263 of the Tax Law to provide for refunds of the tax on mortgages when it has been paid more than once.

The justification of this bill is as follows:

§263 of the Tax Law now provides that the tax on mortgages may be refunded if it is 'erroneously collected'. The Department of Taxation and Finance has taken the position that this provision is not broad enough to cover cases where:

(1) the tax is collected twice on the same mortgage because, through an oversight, the mortgage was recorded twice or

(2) a mortgage covering property in two counties is recorded in both counties and the full amount of the tax is erroneously paid in both counties.

This bill would permit refunds of the excess tax paid in both of the above cases. It is a basic principle of our system of taxation that taxpayers are entitled to refunds when they pay more tax than the law imposes. The present interpretation of §263 of the Tax Law thwarts this basic principle of fair play and should be amended to provide relief for taxpayers who pay more than their fair share. The bill has received the approval of the Department of Taxation and finance."

C. That section 255 of the Tax Law provides in part that if subsequent to the recording of a mortgage on which all taxes have been paid, a supplemental instrument or mortgage is recorded for the purpose of correcting any recorded mortgage, such additional instrument or mortgage shall not be subject to taxation unless it creates a new or further indebtedness other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the recorded primary mortgage.

D. That the corrective mortgage was not subject to mortgage recording tax.

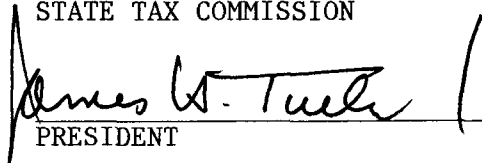
E. That the mortgage recording tax of \$375.00 paid to the Onondaga County Clerk upon the recording of the corrective mortgage was "erroneously paid more than once on the same mortgage" within the meaning of section 263 of the Tax Law, as amended by L. 1979 Ch. 97, sec. 1. The purpose of the amendment was to "permit refunds of the tax on mortgages in cases where it has erroneously been paid more than once". Its effect is not limited to the two specific instances set forth in Senator Goodman's memorandum (supra).


F. That after audit by the Comptroller, the Onondaga County Clerk is herewith directed to refund to petitioner the sum of \$375.00 from mortgage tax monies in his hands or which shall come into his hands and shall charge such amount back to the State, public benefit corporation or the district that was credited with the same.

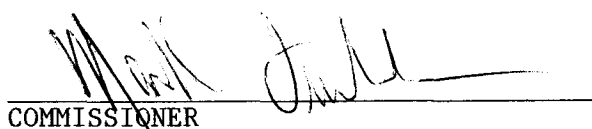
DATED: Albany, New York

MAR 26 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER