

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Commonwealth Land Title Insurance Company :

AFFIDAVIT OF MAILING

for Refund of the Tax on Mortgages under Article 11 :  
of the Tax Law with reference to an instrument  
recorded on 6/27/76. :

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 2nd day of January, 1980, he served the within notice of Determination by certified mail upon Commonwealth Land Title Insurance Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Commonwealth Land Title Insurance Company  
P.O. Box 748  
Riverhead, NY 11901

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  
2nd day of January, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Commonwealth Land Title Insurance Company :

AFFIDAVIT OF MAILING

for Refund of the Tax on Mortgages under Article 11 :  
of the Tax Law with reference to an instrument  
recorded on 6/27/76. :

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 2nd day of January, 1980, he served the within notice of Determination by certified mail upon Stanley E. Levine the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

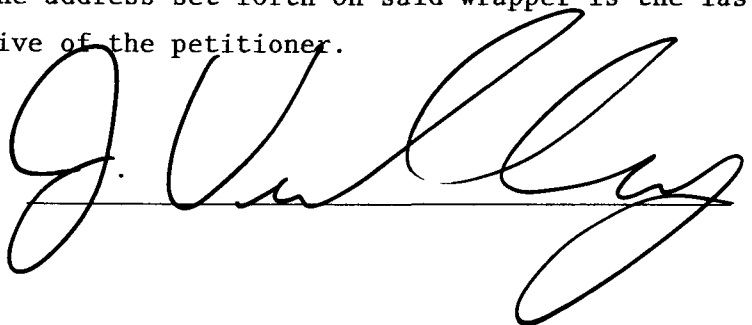
Mr. Stanley E. Levine  
and Gary Seltzer  
10 Peconic Ave.  
Riverhead, NY 11901

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  
2nd day of January, 1980.

Joanne Krapp



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

January 2, 1980

Commonwealth Land Title Insurance Company  
P.O. Box 748  
10 Peconic Ave.  
Riverhead, NY 11901

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(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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Stanley E. Levine  
and Gary Seltzer  
10 Peconic Ave.  
Riverhead, NY 11901  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
COMMONWEALTH LAND TITLE INSURANCE COMPANY	:	DETERMINATION
	:	
for Refund of the Tax on Mortgages under	:	
Article 11 of the Tax Law with reference	:	
to an instrument recorded on July 27, 1976.	:	

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Applicant, Commonwealth Land Title Insurance Company, 10 Peconic Avenue, Riverhead, New York 11901, filed an application for refund of the tax on mortgages under Article 11 of the Tax Law with reference to an instrument recorded on July 27, 1976, in the office of the County Clerk, Suffolk County (File No. 18496).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1977, at 1:15 P.M. Applicant appeared by Stanley E. Levine and Gary Seltzer, Officers. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (James J. Morris, Esq., of counsel).

#### ISSUE

Whether applicant was entitled to a refund of mortgage recording tax erroneously paid upon the recording of an instrument which purported to secure a debt, when applicant intended to record a deed which quit claimed and released rights under a previously recorded collateral security deed.

#### FINDINGS OF FACT

1. Commonwealth Land Title Insurance Company timely filed an application for a refund of mortgage recording tax in the amount of \$648.75, which it contended was mistakenly paid to and collected by the County Clerk of Suffolk County.

2. On February 15, 1973 T.S.G.C. Holding Corp. executed and acknowledged a mortgage to Marine Midland Tinker National Bank in the amount of \$86,500.00, which document was duly recorded by the Clerk of Suffolk County. The appropriate mortgage recording tax was paid at the time of recording. As collateral security for his guarantee of said mortgage and the mortgage note, Theodore Cavalier, president of T.S.G.C. Holding Corp., deeded certain property to Marine Midland Tinker National Bank.

3. On March 25, 1976, the mortgage was fully satisfied and Marine Midland Bank (the successor to Marine Midland Tinker National Bank), purporting to return the collateral property to Cavalier, incorrectly executed and acknowledged another collateral security deed, rather than a deed to quit claim and release its rights under the earlier collateral security deed. This instrument was recorded on July 27, 1976 and mortgage recording tax of \$648.75 was erroneously paid thereon by applicant.

4. Marine Midland Bank later executed and acknowledged a correction deed which was recorded and provided for quit claim and release of its rights under the earlier collateral security deed dated February 15, 1973.

#### CONCLUSIONS OF LAW

A. That the instrument recorded on July 27, 1976 was a collateral security deed which clearly falls within the definition of the term "mortgage" as defined in section 250 of the Tax Law.

B. That when an instrument in proper form is presented to a county clerk for recording along with the proper fees and/or taxes, the clerk is required by law to record it. Section 258 of the Tax Law prohibits the county clerk from recording a mortgage, unless the proper tax has been paid thereon.

C. The authority of the State Tax Commission to order refund of mortgage recording tax is limited to taxes erroneously collected by a recording officer

(section 263 of the Tax Law). A provision that tax paid "through inadvertence or otherwise upon the recording of a mortgage which shall have been discharged without any advancement having been made or secured shall be deemed to have been erroneously collected...", added to the statute by L. 1915 c. 447, was deleted by L. 1916 c. 336.

In this case, the recording officer was presented with an instrument which, by its terms, was subject to the imposition of mortgage recording tax. He was thus required to collect the tax upon recording and his actions were not erroneous.


D. That the application of Commonwealth Land Title Insurance Company for a refund of the tax on mortgages is denied.

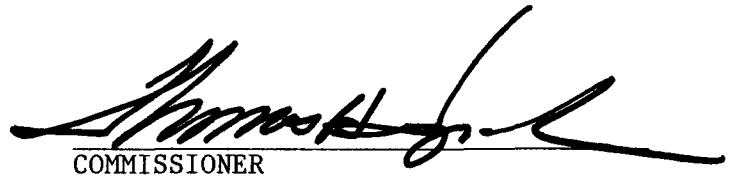
DATED: Albany, New York

STATE TAX COMMISSION

JAN 2 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER