

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Eastview Equities Inc. :  
AFFIDAVIT OF MAILING  
for Refund of the Tax on Mortgages under Article 11 :  
of the Tax Law with reference to an instrument :  
recorded on 1977 :

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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 1st day of May, 1981, he served the within notice of Decision by certified mail upon Eastview Equities Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eastview Equities Inc.  
100 Ring Road West  
Garden City, NY 11530

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  
1st day of May, 1981.

*Annis A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Eastview Equities Inc. :

AFFIDAVIT OF MAILING

for Refund of the Tax on Mortgages under Article 11:  
of the Tax Law with reference to an instrument  
recorded on 1977 :

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 1st day of May, 1981, he served the within notice of Decision by certified mail upon Richard L. Blumenthal the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard L. Blumenthal  
Schlanger, Blumenthal & Lynne  
488 Madison Avenue  
New York, NY 10022

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  
1st day of May, 1981.

*Gunnar P. Hagelund*

*[Signature]*

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

May 1, 1981

Eastview Equities Inc.  
100 Ring Road West  
Garden City, NY 11530

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) 215 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  
Richard L. Blumenthal  
Schlanger, Blumenthal & Lynne  
488 Madison Avenue  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
EASTVIEW EQUITIES, INC.	:	DECISION
to Review a Determination under Article 11 of	:	
the Tax Law with reference to an Instrument	:	
Recorded August 5, 1977.	:	

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Petitioner, Eastview Equities, Inc., 100 Ring Road West, Garden City, New York 11530, filed a petition to review a determination under Article 11 of the Tax Law with respect to an instrument recorded August 5, 1977 (File No. 23490).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on April 26, 1979 at 1:15 P.M. Petitioner appeared by Blumenthal & Lynne, Esqs. (Richard Blumenthal, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel). The City of New York appeared by Allan G. Schwartz, Esq. (Isaac D. Donner, Esq. and Arnold Fox, Esq., of counsel).

ISSUE

Whether a certain mortgage of \$460,300.00 was subject to Mortgage Recording Tax.

FINDINGS OF FACT

1. a. Petitioner, Eastview Equities, Inc., purchased a parcel of real property located at Lax Avenue and Fifth Avenue, Queens County, New York on August 5, 1977. The contract has not been produced by petitioners even though a demand therefor was made.

b. As part of the purchase transaction, petitioner obtained a mortgage loan of \$465,300.00 from College Point Associates. The mortgage is dated August 5, 1977, and is recorded in Reel 1006, Page 1045 of Mortgages, Queens County Clerk's Office.

c. Said mortgage was subject and subordinate to a mortgage held by Long Island Trust Company in the amount of \$560,000.00. Said mortgage was recorded in Liber 8211, Page 283 and Liber 207, Page 273 of Queens County Clerk's office. This mortgage has never been satisfied and is still outstanding.

2. a. On or about August 5, 1977, the sum of \$5,816.25 was paid on behalf of the petitioner to the City Register of Queens County for mortgage recording tax. Said tax was computed on the basis of the mortgage of \$465,300.00 and did not include in any way a tax on the mortgage of \$560,000.00.

b. Said tax was paid without protest and without any claim that no tax was due or that a refund would be requested.

3. The mortgage in question provided, in relevant part, in Section 11 of the rider thereto as follows:

"...The purchase money mortgagor herein shall not be burdened or concerned in any wise with the payment or maintenance in good standing of the underlying mortgage affecting the premises herein mortgaged (other than this purchase money mortgage). Accordingly, the purchase money mortgagee herein covenants and agrees to pay all interest, amortization of principal and other payments whatsoever required to be made under and pursuant to the terms of the underlying mortgage and further to perform all of the terms, conditions and provisions of the said underlying mortgage on the part of the mortgagor to be performed thereunder, the obligation of the purchase money mortgagor herein being fully to perform the terms and conditions of this purchase money mortgage and not those of any underlying mortgage. The purchase money mortgagee herein covenants and agrees not to permit any default to be made in the payment of any of the sums due or to become due pursuant to the terms of the underlying mortgage..."

#### CONCLUSIONS OF LAW

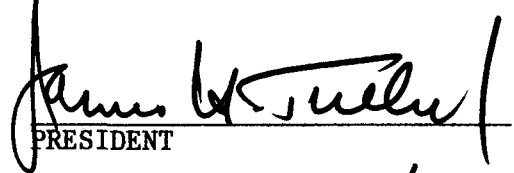
A. The mortgage of \$460,000.00 was clearly taxable under sections 253 and 253-a of the Tax Law. Petitioner has not brought itself within any of the

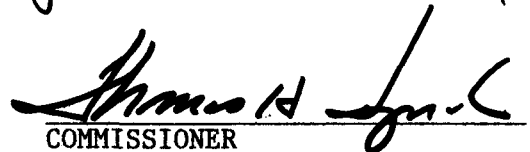
exemptions provided for by section 252 of the Tax Law. In particular, the Commission finds that in this case there was no "double taxation" in any sense.

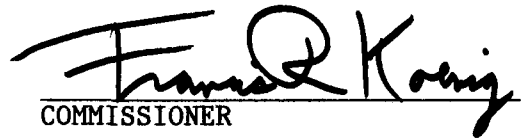
B. The petition is denied. The claim for refund is denied.

DATED: Albany, New York  
MAY 01 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER