

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Emanuel Glouberman :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Mortgage Recording Tax :  
under Article 11 of the Tax Law  
for the Year 1976. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Emanuel Glouberman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

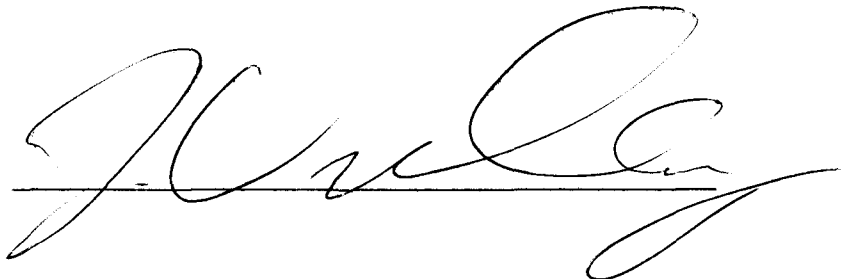
Emanuel Glouberman  
c/o Park 37 Company  
29 W. 56th St.  
New York, NY

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  
3rd day of October, 1980.

Freddie Brunk



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Emanuel Glouberman :

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for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Mortgage Recording Tax :  
under Article 11 of the Tax Law  
for the Year 1976. :

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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Martin David Schechter the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

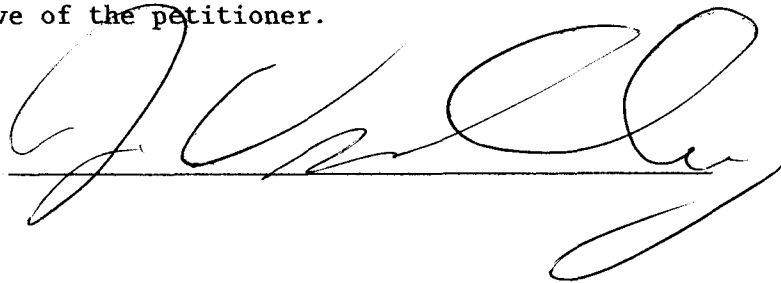
Mr. Martin David Schechter  
Brodsky, Linett, Altman & Schechter  
888 Seventh Ave.  
New York, NY 10019

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  
3rd day of October, 1980.

Luigi Bank



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

October 3, 1980

Emanuel Glouberman  
c/o Park 37 Company  
29 W. 56th St.  
New York, NY

Dear Mr. Glouberman:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Martin David Schechter  
Brodsky, Linett, Altman & Schechter  
888 Seventh Ave.  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
EMANUEL GLOUBERMAN	:	DECISION
to Review a Determination under Article 11 of	:	
the Tax Law with Reference to an Instrument	:	
Recorded in the Office of the Register of the	:	
City of New York, New York County on August 2,	:	
1976, in Reel 375, page 639.	:	

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Emanuel Glouberman, d/b/a Park 37 Company, 29 West 56th Street, New York, New York, filed a petition to review a determination under Article 11 of the Tax Law with reference to an instrument recorded in the office of the Register of the City of New York, New York County on August 2, 1976, in Reel 375, page 639 (File No. 23491).

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 27, 1979 at 9:00 A.M. Petitioner appeared by Brodsky, Linett, Altman, Schechter & Reicher, Esqs. (Martin David Schechter, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel). The City of New York appeared by Allen E. Schwartz, Corporation Counsel (Harold Fox, Esq. and Isaac C. Donner, Esq., of counsel).

ISSUES

I. Whether the instrument recorded on August 2, 1976, constituted a "wrap-around" mortgage so as to entitle petitioner to a refund of mortgage recording tax in the amount of \$3,431.75.

II. Whether petitioner submitted an affidavit, as required by section 255 of the Tax Law, or otherwise protested the payment of mortgage recording tax at the time of recording said mortgage.

FINDINGS OF FACT

1. On July 29, 1976, petitioner, Emanuel Glouberman, d/b/a Park 37 Company, executed a note in the amount of \$350,000.00 and a mortgage to secure payment of said indebtedness to 104 Associates, a New York partnership with offices located at 1776 Broadway, New York, New York. The mortgage, which constituted a lien upon the premises 104-106 East 37th Street, New York, New York, was recorded in the office of the Register of the City of New York, New York County, on August 2, 1976 on Reel 375, page 639.

2. The mortgage was a purchase money mortgage delivered as part of the consideration for conveyance of the premises.

3. A clause in the rider to the mortgage provided as follows:

"This mortgage is a wrap-around mortgage and includes the balances due under prior mortgage(s), and is subject to the following prior mortgage(s): Mortgage held by the Prudential Savings Bank in the reduced amount of \$274,539.87..."

4. The mortgage provided for the deposit of sufficient funds by the mortgagor with the mortgagee, for the payment of principal and interest on all prior mortgages, taxes, assessments for public improvements and premiums on insurance policies. The mortgagee was to hold these funds and disburse them as required by the terms of the prior mortgage. The mortgage specifically stated that the mortgagee did not assume any of the obligations of the mortgagor under any prior mortgage. The obligation of the mortgagee to make payments due under the prior mortgages was only from the aforementioned deposits and not from payments received on the so-called "wrap-around" mortgage.

5. On September 5, 1978, Emanuel Glouberman filed a petition for refund of mortgage recording tax in the amount of \$3,094.25\* on the ground that the

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\* Petitioner had miscalculated the claimed amount of new indebtedness and so amended his request for refund to the amount \$3,431.75.

only new indebtedness created by this mortgage and note was \$102,460.13, citing as authority In the Matter of First Fiscal Fund Corp. v. State Tax Commission, 49 A.D.2d 408, aff'd. mem., 40 N.Y.2d 940.

6. Petitioner did not file with the recording officer an affidavit setting forth the facts upon which the claim for exemption from recording tax was based. No evidence was submitted to indicate that recording tax on the mortgage in issue was paid under protest.

7. On September 15, 1978, the Mortgage and Real Estate Transfer Tax Unit denied petitioner's requested refund primarily because, by the terms of the mortgage, the mortgagee had not assumed any obligation of the mortgagor under the prior mortgage.

#### CONCLUSIONS OF LAW

A. That section 255 of the Tax Law provides in relevant part:

"If subsequent to the recording of a mortgage on which all taxes, if any, accrued under this article have been paid, a supplemental instrument or mortgage is recorded... such additional instrument or mortgage shall not be subject to taxation under this article, unless it creates or secures a new or further indebtedness or obligation secured by... the recorded primary mortgage, in which case, a tax is imposed... on such new or further indebtedness or obligation..."

B. That under a "wrap-around" mortgage, the parties continue the prior lien and add thereto a new indebtedness; the wrap-around mortgagee makes payments due under the prior lien from the payments he receives from the wrap-around mortgagor. In such situations, it has been held that the recording tax is payable only upon the increase in or addition to the principal debt and not the entire amount secured by the wrap-around mortgage. In the Matter of First Fiscal Fund Corp. v. State Tax Commission, 49 A.D.2d 408, aff'd mem., 40 N.Y.2d 940; In the Matter of Park and 46th Street Corp. v. State Tax Commission, 295 N.Y. 173; In the Matter of the City of New York v. Murphy, 36 A.D.2d 658;

Matter of the Application of Fifth Avenue and 46th Street Corp. v. Bragalini,  
4 A.D.2d 387.

C. That the mortgage at issue herein did not fall within the definition of a wrap-around mortgage. The mere fact that an instrument is labeled a wrap-around mortgage does not make it so. The mortgagee did not assume any of the obligations of the mortgagor under any prior mortgage. The instrument was subject to mortgage recording tax because it secured a portion of the purchase price.

D. That the mortgage recording tax imposed by section 253 of the Tax Law is measured by the total debt secured, \$350,000.00 in the instant case.

E. That when a supplemental or additional mortgage is offered for recordation and an exemption from recording tax is claimed by virtue of section 255 of the Tax Law, the following procedure must be complied with:

"...there shall be filed with the recording officer and preserved in his office a statement under oath of the facts on which such claim for exemption is based." Tax Law Section 255.

In an opinion by the Attorney General, it was maintained that there can be no exemption from the recording tax unless the aforesaid requirement imposed by section 255 has been met. 1914 Attorney General 204.

The mortgage recording tax was not paid under protest nor was an affidavit submitted at the time of recordation. On such ground alone, the instant case can be distinguished from First Fiscal Fund Corp., supra.

F. That the petition of Emanuel Glouberman for refund of mortgage tax is hereby denied.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
URMAN COMPANY	:	DECISION
to Review a Determination under Article 11 of	:	
the Tax Law with Reference to an Instrument	:	
Recorded in the Office of the Register of the	:	
City of New York, New York County on June 30,	:	
1976, in Reel 372, page 1792.	:	

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Urman Company, a partnership with its office located at 29 West 65th Street, New York, New York, filed a petition to review a determination under Article 11 of the Tax Law with reference to an instrument recorded in the office of the Register of the City of New York, New York County on June 30, 1976, in Reel 372, page 1792 (File No. 23491).

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 27, 1979 at 9:00 A.M. Petitioner appeared by Brodsky, Linett, Altman, Schechter & Reicher, Esqs. (Martin David Schechter, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel). The City of New York appeared by Allen E. Schwartz, Corporation Counsel (Harold Fox, Esq. and Isaac C. Donner, Esq., of counsel).

ISSUES

I. Whether the instrument recorded on June 30, 1976, constituted a "wrap-around" mortgage so as to entitle petitioner to a refund of mortgage recording tax in the amount of \$2,070.67.

II. Whether petitioner submitted an affidavit, as required by section 255 of the Tax Law, or otherwise protested the payment of mortgage recording tax at the time of recording said mortgage.



FINDINGS OF FACT

1. On June 22, 1976, petitioner executed a note in the amount of \$240,000.00 and a mortgage to secure payment of said indebtedness to William K. Langfan and Aaron Ziegelman, mortgagees. The mortgage was a lien on premises 98-100 Cooper Street, New York, New York, and was recorded in the office of the Register of the City of New York, New York County, in Reel 372, page 1792 on June 30, 1976. The full mortgage tax due thereon in the amount of \$3,000.00 was paid at the time of filing said mortgage.

2. Petitioner, Urman Company, was a New York partnership with offices located at 29 West 65th Street, New York, New York. The mortgage and note were signed by Emanuel Glouberman and Ur Lemberger as general partners.

3. The mortgage was a purchase money mortgage delivered as part of the consideration for conveyance of the premises.

4. A clause in the rider to the mortgage provided as follows:

"This mortgage is a wrap-around mortgage and includes the balances due under prior mortgage(s), and is subject to the following prior mortgage(s): Mortgage held by the Franklin Savings Bank of New York, in the reduced amount of \$165,653.62..."

5. The mortgage provided for the deposit of sufficient funds by the mortgagor with the mortgagees, for the payment of principal and interest on all prior mortgages, taxes, assessments for public improvements and premiums on insurance policies. The mortgagees were to hold these funds and disburse them as required by the terms of the prior mortgage. The mortgage specifically stated that the mortgagees did not assume any of the obligations of the mortgagor under any prior mortgage. The obligation of the mortgagees to make payments due under the prior mortgages was only from the aforementioned deposits and not from payments received on the so-called "wrap-around" mortgage.

6. On August 22, 1978, Urman Company filed a petition for refund of mortgage recording tax in the amount of \$2,070.67 on the ground that the only new indebtedness created by this mortgage and note was \$74,346.38, citing as authority In the Matter of First Fiscal Fund Corp. v. State Tax Commission, 49 A.D.2d 408, aff'd mem., 40 N.Y.2d 940.

7. Petitioner did not file with the recording officer an affidavit setting forth the facts upon which the claim for exemption from recording tax was based. No evidence was submitted to indicate that recording tax on the mortgage in issue was paid under protest.

8. On September 15, 1978, the Mortgage and Real Estate Transfer Tax Unit denied petitioner's requested refund primarily because, by the terms of the mortgage, the mortgagees had not assumed any obligation of the mortgagor under the prior mortgage.

#### CONCLUSIONS OF LAW

A. That section 255 of the Tax Law provides in relevant part:

"If subsequent to the recording of a mortgage on which all taxes, if any, accrued under this article have been paid, a supplemental instrument or mortgage is recorded... such additional instrument or mortgage shall not be subject to taxation under this article, unless it creates or secures a new or further indebtedness or obligation secured by... the recorded primary mortgage, in which case, a tax is imposed... on such new or further indebtedness or obligation..."

B. That under a "wrap-around" mortgage, the parties continue the prior lien and add thereto a new indebtedness; the wrap-around mortgagee makes payments due under the prior lien from the payments he receives from the wrap-around mortgagor. In such situations, it has been held that the recording tax is payable only upon the increase in or addition to the principal debt and not the entire amount secured by the wrap-around mortgage. In the Matter of First Fiscal Fund Corp. v. State Tax Commission, 49 A.D.2d 408, aff'd mem., 40

N.Y.2d 940; In the Matter of Park and 46th Street Corp. v. State Tax Commission, 295 N.Y. 173; In the Matter of the City of New York v. Murphy, 36 A.D.2d 658; Matter of the Application of Fifth Avenue and 46th Street Corp. v. Bragalini, 4 A.D.2d 387.

C. That the mortgage at issue herein did not fall within the definition of a wrap-around mortgage. The mere fact that an instrument is labeled a wrap-around mortgage does not make it so. The mortgagees did not assume any of the obligations of the mortgagor under any prior mortgage. The instrument was subject to mortgage recording tax because it secured a portion of the purchase price.

D. That the mortgage recording tax imposed by section 253 of the Tax Law is measured by the total debt secured, \$240,000.00 in the instant case.

E. That when a supplemental or additional mortgage is offered for recordation and an exemption from recording tax is claimed by virtue of section 255 of the Tax Law, the following procedure must be complied with:

"...there shall be filed with the recording officer and preserved in his office a statement under oath of the facts on which such claim for exemption is based." Tax Law Section 255.

In an opinion by the Attorney General, it was maintained that there can be no exemption from the recording tax unless the aforesaid requirement imposed by section 255 has been met. 1914 Attorney General 204.

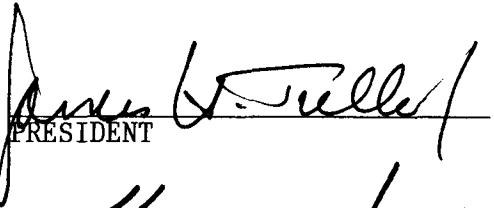
The mortgage recording tax was not paid under protest nor was an affidavit submitted at the time of recordation. On such ground alone, the instant case can be distinguished from First Fiscal Fund Corp., supra.

F. That the petition of Urman Company for refund of mortgage tax is hereby denied.

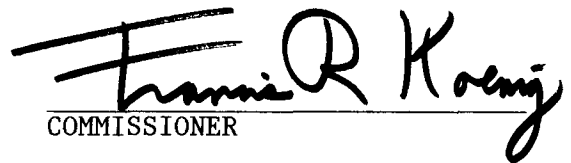
DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER