

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Arthur Holding Co., Inc. :  
AFFIDAVIT OF MAILING  
to Review a Determination under Article 11 of the :  
Tax Law with Reference to Mortgages Recorded on :  
April 1, 1982. :

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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Arthur Holding Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur Holding Co., Inc.  
26 Court Street  
Brooklyn, NY 11201

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
21st day of August, 1985.

David Parchuck

Conrad A. Hugan

Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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Tax Law with Reference to Mortgages Recorded on :  
April 1, 1982. :

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State of New York :  
ss.:  
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Joseph Frost, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Frost  
Rappaport & Frost  
225 Broadway, Room 2008  
New York, NY 10007

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
21st day of August, 1985.

David Parchuck

James A. Hughes

Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Arthur Holding Co., Inc. :  
AFFIDAVIT OF MAILING  
to Review a Determination under Article 11 of the :  
Tax Law with Reference to Mortgages Recorded on :  
April 1, 1982. :

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State of New York :  
ss.:  
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Edward V. Regan, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward V. Regan  
Office of the State Comptroller  
Alfred E. Smith Bldg.  
Albany, NY 12236

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
21st day of August, 1985.

David Parchuck

James P. Hays  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Arthur Holding Co., Inc. :  
AFFIDAVIT OF MAILING  
to Review a Determination under Article 11 of the :  
Tax Law with Reference to Mortgages Recorded on :  
April 1, 1982. :

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State of New York :  
ss.:  
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Frederick A.O. Schwarz, Jr., the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Federick A.O. Schwarz, Jr.  
Corporation Counsel City  
Municipal Bldg.  
100 Church St., Rm. 5H9  
New York, NY 10007  
Attn: Arnold Fox

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
21st day of August, 1985.

David Parchuck

Samuel A. [Signature]  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Arthur Holding Co., Inc. :  
AFFIDAVIT OF MAILING  
to Review a Determination under Article 11 of the :  
Tax Law with Reference to Mortgages Recorded on :  
April 1, 1982. :

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State of New York :  
ss.:  
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Jay E. Grunfeld, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jay E. Grunfeld  
Active City Register  
Kings County Office  
Room 1, Municipal Bldg.  
Brooklyn, NY 11201

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
21st day of August, 1985.

David Parchuck

James O. Dege  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
Arthur Holding Co., Inc.	:	
	:	AFFIDAVIT OF MAILING
to Review a Determination under Article 11 of the	:	
Tax Law with Reference to Mortgages Recorded on	:	
April 1, 1982.	:	

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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of August, 1985, he served the within notice of Decision by certified mail upon Robert Mensing, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Mensing  
Mortgage & Real Estate Transfer Tax Unit  
Bldg. #9, Room 403  
State Campus  
Albany, NY 12227

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
21st day of August, 1985.

David Parchuck

James P. Haggard  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

August 21, 1985

Arthur Holding Co., Inc.  
26 Court Street  
Brooklyn, NY 11201

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Joseph Frost  
Rappaport & Frost  
225 Broadway, Room 2008  
New York, NY 10007

AND

Edward V. Regan  
Office of the State Comptroller  
Alfred E. Smith Bldg.  
Albany, NY 12236

AND

Robert Mensing  
Mortgage & Real Estate Transfer Tax Unit  
Bldg. #9, Room 403  
State Campus  
Albany, NY 12227

AND

Federick A.O. Schwarz, Jr.  
Corporation Counsel City  
Municipal Bldg.  
100 Church St., Rm. 5H9  
New York, NY 10007  
Attn: Arnold Fox

AND

Jay E. Grunfeld  
Active City Register  
Kings County Office  
Room 1, Municipal Bldg.  
Brooklyn, NY 11201

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ARTHUR HOLDING CO., INC.	:	DECISION
	:	
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with Reference	:	
to Mortgages Recorded on April 1, 1982.	:	

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Petitioner, Arthur Holding Co., Inc., 26 Court Street, Brooklyn, New York 11201, filed a petition for redetermination of mortgage recording tax under Article 11 of the Tax Law with reference to mortgages recorded on April 1, 1982 (File No. 48361).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 26, 1984 at 1:15 P.M., with all briefs to be submitted by February 15, 1985. Petitioner appeared by Rappaport & Frost, Esqs. (Joseph Frost, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel). The City of New York appeared by Frederick A. O. Schwarz, Jr., Esq. (Arnold Fox, Esq., of counsel).

#### ISSUE

Whether the retroactive application of an increase to the mortgage recording tax is constitutional, and, if so, whether the language of the statute precludes local laws from being retroactively applied.

#### FINDINGS OF FACT

1. On January 27, 1982, petitioner, Arthur Holding Co., Inc., entered into a contract with The New York Bank For Savings ("the Bank") for the purchase of premises located at 81 and 85 Eighth Avenue, New York City. During the negotiations, the question of the possibility of legislation increasing the



mortgage recording tax was raised. At some time, either during negotiations or at the closing on March 31, 1982, one of the negotiators called an unnamed employee of the Department of Taxation and Finance concerning the effective date of a potential tax increase. The employee apparently informed the caller that if the title was closed by March 31, 1982, there would be no additional tax.

2. On March 31, 1982, petitioner delivered two mortgages to the Bank. The first mortgage was in the amount of \$3,600,000.00. The real property subject to the mortgage was the premises at 85 Eighth Avenue. The second mortgage was in the amount of \$500,000.00. The real property subject to this mortgage was the premises located at 81 Eighth Avenue. The mortgages were recorded at the office of the City Register, County of New York on April 1, 1982. Petitioner paid mortgage recording tax on the first mortgage in the amount of \$54,000.00 and on the second mortgage in the amount of \$7,500.00.

3. On April 12, 1982, the legislature increased the rate of tax imposed upon mortgages totalling \$500,000.00 or more. The legislation was effective on February 1, 1982 and applied to all mortgages recorded on or subsequent to that date. On November 2, 1983, the City Register, New York County advised petitioner as follows:

"Several months ago, you were notified that pursuant to action of the New York State Legislature in April, 1982, additional mortgage tax was due on the mortgage referenced below. To date, this additional tax remains unpaid.

As noted in our original letter, an estoppel notation has been placed against said mortgage in accordance with Section 258 of the Tax Law.

At this time, we are notifying you that continued non-payment of this additional tax may result in further action as prescribed in the Tax Law, including sale of said mortgage by the Attorney General."

Similar letters were sent regarding each mortgage in issue. The letters informed petitioner that an additional amount of \$22,500.00 plus penalty was due on the \$3,600,000.00 mortgage and that an additional \$3,125.00 plus penalty was due on the \$500,000.00 mortgage. As of the date of the hearing, the tax had not been paid.

4. Petitioner argues that the retroactive application of the increase is unconstitutional and that, even if constitutional, language in the statute providing that the local law would not be effective unless a certified copy of the law were mailed to the Tax Commission at least sixty days prior to the local law taking effect, precludes the retroactive application of local laws.

#### CONCLUSIONS OF LAW

A. That Chapter 57 of the Laws of 1982, enacted on April 12, 1982, amended section 253-a of the Tax Law and section W46-1.0 of the Administrative Code of the City of New York, which impose a mortgage recording tax in New York City in addition to taxes imposed by section 253 of the Tax Law. The amendment increased the rate of taxation on the recording of certain mortgages recorded on or after February 1, 1982. The original tax, which was 50 cents for each \$100.00 of principal debt, was increased to \$1.125 for each \$100.00. Petitioner's mortgage was recorded on April 1, 1982 and fell within the retroactive period of application provided for in the statute.

B. That the laws of New York State are presumed to be constitutionally valid at the administrative level of the State Tax Commission. Moreover, the retroactive application of the increase provided for in section 253-a of the Tax Law has been found to be constitutional as "an appropriate exercise of Legislative power..." (Beaumont Co. v. State of New York, 125 Misc. 2d 87 [Sup. Ct., New York County]).


C. That inasmuch as the Administrative Code of the City of New York was amended concurrently with the Tax Law and specifically imposed the tax increase retroactively, the 60 day notice requirement for imposing an amendment to local law under section 253-a(5) of the Tax Law is not applicable. Petitioner's argument that retroactive application of local laws was precluded in this case by the aforesaid section is without merit.


D. That the petition of Arthur Holding Co., Inc. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 21 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER