

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chera Realty Company :
to Review a Determination under Article 11 of the :
Tax Law with Reference to a Mortgage Recorded on :
May 6, 1983. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he/she served the within notice of Decision by certified mail upon Chera Realty Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Chera Realty Company
Attn: Gerard I. Castelli
523 Fulton Street
Brooklyn, NY

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
28th day of January, 1986.

David Parchuck

James A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
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May 6, 1983. :

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

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he served the within notice of Decision by certified mail upon Gerard I. Castelli, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerard I. Castelli
P.O. Box 481
Tuckahoe, NY 10707

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
28th day of January, 1986.

David Parchuck

Connie Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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May 6, 1983. :

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

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, 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:

Frederick A. O. Schwarz, Jr.
Corporation Council, City of New York
Municipal Bldg., 100 Church St., Rm. 589
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
28th day of January, 1986.

David Parchuck

Authorized to administer oaths
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of :
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May 6, 1983. :

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

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, 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
Room 403, Building 9, 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
28th day of January, 1986.

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chera Realty Company :
to Review a Determination under Article 11 of the :
Tax Law with Reference to a Mortgage Recorded on :
May 6, 1983. :

AFFIDAVIT OF MAILING

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

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he served the within notice of Decision by certified mail upon Jay 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 Grunfeld
City Register, New York County
31 Chambers St.
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
28th day of January, 1986.

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

Chera Realty Company
Attn: Gerard I. Castelli
523 Fulton Street
Brooklyn, NY

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

Gerard I. Castelli
P.O. Box 481
Tuckahoe, NY 10707

AND

Frederick A. O. Schwarz, Jr.
Corporation Council, City of New York
Municipal Bldg., 100 Church St., Rm. 589
New York, NY 10007

AND

Taxing Bureau's Representative

AND

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

AND

Jay Grunfeld
City Register, New York County
31 Chambers St.
New York, NY 10007

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CHERA REALTY COMPANY	:	DECISION
to Review a Determination under Article 11	:	
of the Tax Law with Reference to Mortgages	:	
Recorded on May 6, 1983.	:	

Petitioner, Chera Realty Company, 523 Fulton Street, Brooklyn, New York, filed a petition to review a determination under Article 11 of the Tax Law with reference to mortgages recorded on May 6, 1983 (File No. 54556).

A formal hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 20, 1985 at 1:15 P.M., with all briefs to be submitted by November 18, 1985. Petitioner appeared by Gerard I. Castelli, Esq. (Charles J. Acker, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel). The City of New York appeared by Frederick A. O. Schwarz, Jr., Esq. (Glenn Newman, Esq., of counsel).

ISSUE

Whether the Register of the City of New York, Kings County, may properly aggregate twenty-seven mortgages executed on the same date by the same mortgagor to approximately thirty different mortgagees, encumbering twenty-seven fractional portions of what is now one tax lot, thereby subjecting said mortgages to a higher tax rate.

FINDINGS OF FACT

1. On February 17, 1983, Chera Realty Company (hereinafter "petitioner") purchased real property located at 523-525 Fulton Street, Brooklyn, New York.

The property is improved by a three-story structure which, at the time of purchase, contained six or seven stores. The sellers of this property were approximately thirty individuals who had interests in various portions of the property. Some of the sellers had acquired title through inheritance or devise while others had purchased title. Petitioner entered into twenty-seven separate contracts of sale and, after execution of twenty-seven separate notes and mortgages, petitioner accepted delivery of twenty-seven deeds. Each mortgage and deed description differed from the others. Each deed reflected a seller's separate fractional interest in the property which originally consisted of eighteen tax lots. Some of the sellers owned fractional interests in two lots while others owned interested in many lots. None of the sellers owned an interest in all eighteen lots, however. Each note was in a separate amount which reflected the mortgagee's respective share of the total purchase price of \$2,250,000.00. Pursuant to the terms of the contracts of sale, petitioner paid \$500,000.00 at closing and executed twenty-seven purchase money mortgages with a total principal sum of \$1,749,968.00.

2. Prior to 1945, the parcel of real property purchased by petitioner consisted of eighteen tax lots. In 1923, seven groups which had an interest in the contiguous lots which presently constitute the parcel purchased by petitioner, leased the property to Velbard Realty. These leases were extended and modified in 1945 and again in 1966. The leases and subsequent extension and modification agreements provided that Velbard Realty, as lessee, was to be responsible for all real estate taxes, sewer rents, insurance, water, maintenance and all other expenses connected with the management of occupancy of the premises, exclusive of mortgage obligations. At a time unknown, the eighteen lots which were

leased to Velbard Realty were consolidated into a single tax lot, presumably for convenience in paying real property taxes.

3. At the time of negotiation of the contracts of sale, certain of the sellers objected to the utilization of one mortgage to secure petitioner's indebtedness on the advice of tax counsel that it could complicate the estates of some of the sellers, present problems in title reports and give some of the mortgagees an interest or collateral interest in property in which they had no claim.

4. On March 10, 1983, petitioner presented the twenty-seven mortgages for recording at the Office of the Register of the City of New York, Kings County, together with a check for payment of the mortgage recording tax at the rate of $1\frac{1}{2}$ percent of the principal debt or obligation of each mortgage, since each mortgage secured a principal debt or obligation of less than \$500,000.00. The Register aggregated all twenty-seven of the mortgages, resulting in an aggregated principal debt of \$1,749,968.00 and thereupon refused to record the mortgages unless a mortgage recording tax at the rate of $2\frac{1}{4}$ percent of the principal debt or obligation, the rate applicable to mortgages of \$500,000.00 or more, was paid by petitioner. Petitioner made a variety of informal appeals to the New York City Finance Department by letters dated March 10 and April 15, 1983, but said appeals were rejected. Thereafter, on May 6, 1983, petitioner paid, under protest, a mortgage recording tax to record the twenty-seven mortgages in the amount of \$39,360.45, said amount representing tax imposed at the rate of $2\frac{1}{4}$ percent of the aggregated principal debts or obligations of the twenty-seven mortgages. Petitioner contends that the twenty-seven mortgages should not have been aggregated by the Register and that the mortgage recording tax should have been imposed at the rate of $1\frac{1}{2}$ percent. Petitioner has, therefore, requested a

refund of \$13,112.59, the difference between the mortgage recording tax paid and \$26,247.86, the amount of mortgage recording tax which would have been due had the mortgages not been aggregated.

5. The City of New York contends that aggregation of the mortgages and imposition of the mortgage recording tax at the higher rate was proper since petitioner purchased one tax lot consisting of one parcel of land and one building that was incapable of division. The City further contends that there was a single purchase price negotiated between petitioner and the several sellers and that, as such, it was one integrated transaction.

CONCLUSIONS OF LAW

A. That section 253.1 of the Tax Law provides, in part, that:

"[a] tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of the execution thereof or at any time thereafter by a mortgage on real property situated within the state recorded on or after the first day of July, nineteen hundred and six, is hereby imposed on each such mortgage..."
(Emphasis added.)

Subdivisions 1-a(a) and 2(a) of section 253 impose additional taxes of twenty-five cents each on each \$100.00 of principal indebtedness, with certain exceptions not applicable herein.

B. That section 253-a of the Tax Law authorizes any city in New York having a population of one million or more to adopt local laws imposing, "with respect to real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of fifty cents, with respect to one, two or three-family houses, individual cooperative apartments and individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of sixty-two and one-half cents, and with respect to all other real property a tax of one dollar and twenty-five

cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on such real property...". Section W46-1.0 of Title W of the Administrative Code of the City of New York adopts the language of section 253 and imposes the tax authorized by section 253-a.

C. That the language of both section 253 of the Tax Law and section W46-1.0 of the Administrative Code of the City of New York expressly states that the tax is imposed on "each such mortgage". There is no provision for aggregating mortgages merely because they apply to the same property.


D. That the instant case, each of the twenty-seven mortgages secures a separate and distinct obligation of petitioner to a mortgagee or group of mortgagees which was incurred by reason of the execution of a separate contract of sale. After execution of each of the twenty-seven mortgages and accompanying notes, petitioner accepted delivery of twenty-seven deeds, each containing a different land description which represented a particular grantor/mortgagee's fractional interest in the entire parcel of real property purchased by petitioner. There was a rational basis for the transaction being consummated in this form and there was, therefore, no basis for the recording officer to aggregate the twenty-seven mortgages and to impose the mortgage recording tax at the higher rate applicable to mortgages securing a principal debt or obligation of \$500,000.00 or more (Matter of Chelsea-19th Street Associates, State Tax Commission, January 31, 1984).

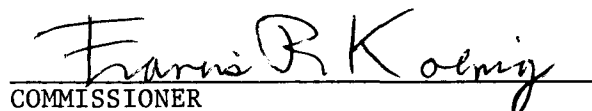
E. That the petition of Chera Realty Company is granted and the sum of \$13,112.59 is to be refunded, together with such interest as may be lawfully owing.

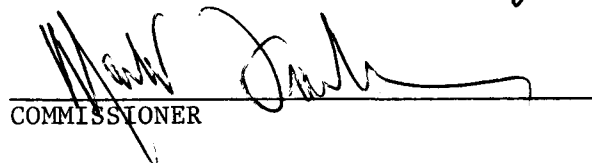
DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER