

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Citibank, N.A. : AFFIDAVIT OF MAILING

for Redetermination of Mortgage Recording Tax :
under Article 11 of the Tax Law with Reference :
to a Mortgage Recorded on August 12, 1983. :

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, 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 15th day of October, 1986, he/she served the within notice of Decision by certified mail upon Citibank, N.A. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

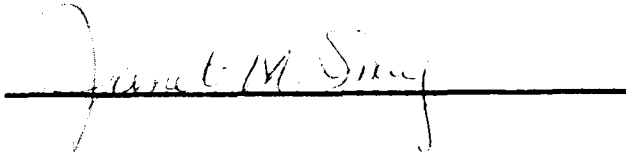
Citibank, N.A.
399 Park Avenue
New York, NY 10043

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
15th day of October, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Vidyasagar & Shantha Annam : AFFIDAVIT OF MAILING
for Redetermination of Mortgage Recording Tax :
under Article 11 of the Tax Law with Reference :
to a Mortgage Recorded on August 12, 1983. :

State of New York :

ss.:

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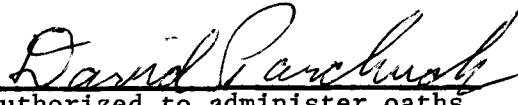
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 15th day of October, 1986, he/she served the within notice of Decision by certified mail upon Vidyasagar & Shantha Annam the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

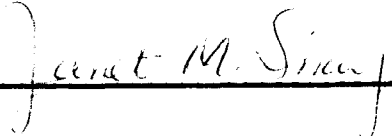
Vidyasagar & Shantha Annam
598 Vanderbilt Pkwy.
Dix Hills, NY 11746

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.

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STATE OF NEW YORK

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for Redetermination of Mortgage Recording Tax :
under Article 11 of the Tax Law with Reference :
to a Mortgage Recorded on August 12, 1983. :

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

David Parchuck/Janet M. Snay, 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 15th day of October, 1986, he served the within notice of Decision by certified mail upon Nancy L. Kovacik, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nancy L. Kovacik
Pace & Pace
400 Montauk Highway
West Islip, NY 11795

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
15th day of October, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Vidyasagar & Shantha Annam : AFFIDAVIT OF MAILING
for Redetermination of Mortgage Recording Tax :
under Article 11 of the Tax Law with Reference :
to a Mortgage Recorded on August 12, 1983. :

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


David Parchuck/Janet M. Snay, 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 15th day of October, 1986, he served the within notice of Decision by certified mail upon Nancy L. Kovacik, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

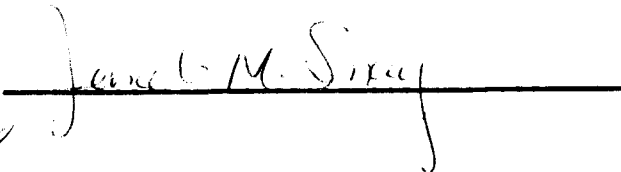
Nancy L. Kovacik
Pace & Pace
400 Montauk Highway
West Islip, NY 11795

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
15th day of October, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



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

October 15, 1986

Vidyasagar & Shantha Annam
598 Vanderbilt Pkwy.
Dix Hills, NY 11746

Dear Mr. & Mrs. Annam:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Nancy L. Kovacik
Pace & Pace
400 Montauk Highway
West Islip, NY 11795

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

October 15, 1986

Citibank, N.A.
399 Park Avenue
New York, NY 10043

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.

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Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Nancy L. Kovacik
Pace & Pace
400 Montauk Highway
West Islip, NY 11795

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CITIBANK, N.A.	:	DECISION
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with reference to:	:	
a Mortgage Recorded on August 12, 1983.	:	

In the Matter of the Petition	:	
of	:	
VIDYASAGAR and SHANTHA ANNAM	:	
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with reference to	:	
a Mortgage Recorded on August 12, 1983.	:	

Petitioner, Citibank, N.A., 399 Park Avenue, New York, New York 10043, filed a petition for redetermination of mortgage recording tax under Article 11 of the Tax Law with reference to a mortgage recorded on August 12, 1983 (File No. 55074).

Petitioners, Vidyasagar and Shantha Annam, 598 Vanderbilt Parkway, Dix Hills, New York 11746, filed a petition for redetermination of mortgage recording tax under Article 11 of the Tax Law with reference to a mortgage recorded on August 12, 1983 (File No. 55074).

A hearing was held before Sandra F. Heck, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 19, 1986 at 9:40 A.M., with all briefs to be submitted by June 16, 1986. Petitioners appeared by Pace and Pace, Esqs. (Nancy L. Kovacik, Esq., of

counsel). The audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether the Audit Division correctly denied petitioners' claims for refunds of mortgage recording tax.

FINDINGS OF FACT

1. On April 2, 1984, petitioners, Citibank, N.A. and Vidyasagar and Shantha Annam, by their representative, applied to the Audit Division for refunds of mortgage recording tax paid on an August 9, 1983 transaction, which was recorded on August 12, 1983. The Audit Division denied petitioners' applications on July 26, 1984.

2. Petitioner Citibank, N.A. ("Citibank") had a first mortgage on the property of petitioners Vidyasagar and Shantha Annam located at 598 Vanderbilt Parkway, Dix Hills, New York 11746, which mortgage was dated September 15, 1981. The principal balance of the mortgage was \$184,491.47 on August 9, 1983. The mortgage was satisfied by a Satisfaction of Mortgage recorded October 11, 1983.

3. Roosevelt Savings Bank ("Roosevelt") also held two mortgages on the aforesaid property of petitioners Vidyasagar and Shantha Annam which mortgages were dated October 18, 1981. The total principal balance of the mortgages held by Roosevelt on August 9, 1983 was \$12,422.43. These mortgages were satisfied by two satisfactions of mortgage recorded January 30, 1984.

4. On August 9, 1983, a closing was held at which petitioners paid mortgage recording tax based on a \$297,000.00 mortgage. Pursuant to section 253 of the Tax Law, petitioners Vidyasagar and Shantha Annam paid mortgage

recording tax of \$2,202.50, and petitioner Citibank paid special additional mortgage recording tax of \$742.50.

5. The total principal balance of the three prior mortgages (see Findings of Fact "2" and "3" herein) as of August 9, 1983 was \$196,913.90.

6. Petitioners argue that it was their intention for Citibank to take assignments of the two Roosevelt mortgages and to consolidate the August 9, 1983 mortgage and the three prior mortgages into one mortgage of \$297,000.00, thus requiring mortgage recording tax to be paid only on the new advance of \$100,086.10. Petitioner Citibank would have paid special additional mortgage recording tax of \$250.22, and petitioners Vidyasagar and Shantha Annam would have paid mortgage recording tax of \$725.65, had the mortgage recording tax been based on the \$100,086.10 figure. Petitioners maintain that, due to an inadvertent error committed at the August 9, 1983 closing, petitioners erroneously paid mortgage recording tax on the original \$196,913.90 twice.

7. There was nothing in the August 9, 1983 mortgage to indicate an intent to consolidate a new loan with the unpaid balance of the three prior loans.

8. Petitioners did not file an affidavit indicating an intent to consolidate the three prior mortgages and the August 9, 1983 mortgage, when the latter was recorded.

CONCLUSIONS OF LAW

A. That section 253.1 of the Tax Law requires that recording officers collect taxes on the 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 New York State.

B. That section 255 of the Tax Law provides an exemption from mortgage recording tax for supplemental mortgages. The instrument denominated as

supplemental must be recorded subsequent to a mortgage or mortgages which have been recorded and upon which all mortgage recording taxes have been paid, and such instrument must be recorded for one of three purposes: (1) to correct or perfect a prior recorded instrument; (2) pursuant to a provision or covenant to a prior recorded instrument; or (3) to impose a lien upon additional property not identified or covered in the prior recorded instrument for purposes of securing the initial principal indebtedness. If the instrument is supplemental, within the meaning and intent of the statute, the parties must file an affidavit evidencing this intent in order to qualify for exemption from taxation.

C. That petitioners are not exempt from mortgage recording tax liability under section 255 of the Tax Law. The August 9, 1983 instrument is not a supplemental mortgage within the meaning of the statute: petitioners do not assert that the instrument was recorded to perfect or correct a prior recorded mortgage; none of the previous mortgages secured by the subject property contain provisions for supplemental instruments; and, the property identified in the August 9, 1983 instrument is identical to that covered in the previous mortgages. Furthermore, petitioners did not file an affidavit as required by the statute.

D. That section 250 of the Tax Law provides, in pertinent part, as follows:

"A contract or agreement by which the indebtedness secured by any mortgage is increased or added to, shall be deemed a mortgage of real property... and shall be taxable as such upon the amount of such increase or addition."

E. That the August 9, 1983 instrument did not represent merely an increase in the original indebtedness within the meaning of section 250 of the Tax Law (see Matter of City of New York v. Murphy, 36 AD2d 658). Rather, it created a separate indebtedness, and as such was taxable on the entire

amount stipulated therein (Tax Law §253). At the time the August 9, 1983 mortgage was recorded, the first Citibank mortgage and the two Roosevelt mortgages remained unsatisfied. It was not until October 11, 1983 that the prior Citibank mortgage was satisfied, and not until January 30, 1984 that the two Roosevelt mortgages were satisfied. Therefore, there was no merging of the indebtedness secured in the August 9, 1983 instrument with the indebtedness secured by the three prior mortgages as required to bring said instrument within the meaning of section 250 of the Tax Law.

F. That the petitions of Citibank, N.A., and Vidyasagar and Shantha Annam are denied and the Audit Division's denial of petitioners' claims for refunds is sustained.

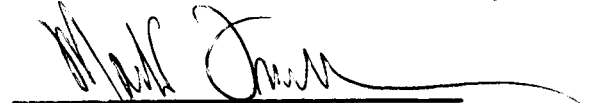
DATED: Albany, New York

STATE TAX COMMISSION

OCT 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER