

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sotirios Econopouly :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Recording :
Tax under Article 11 of the Tax Law for Mortgages :
Recorded on March 4, 1983 and June 14, 1984. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

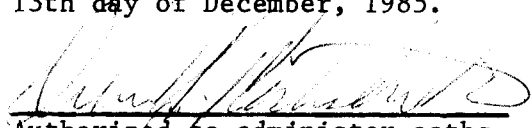
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Sotirios Econopouly, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sotirios Econopouly
1 Sierks Lane
Roslyn Harbor, New York

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
13th day of December, 1985.



Authorized to administer oaths
pursuant to Tax Law section 174



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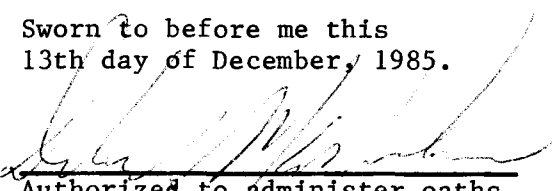
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Robert Mensing, the representative of the petitioner 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
Building 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.

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Connie A. Hagelund

STATE OF NEW YORK

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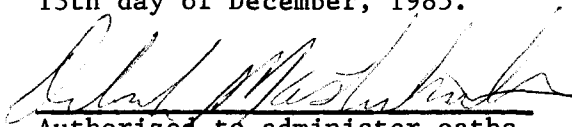
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Arnold J. Ross, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arnold J. Ross
Goldfeld, Charak & Ross
485 Madison Avenue
New York, NY 10022

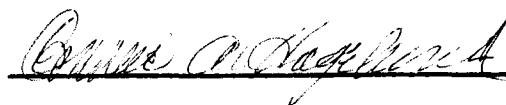
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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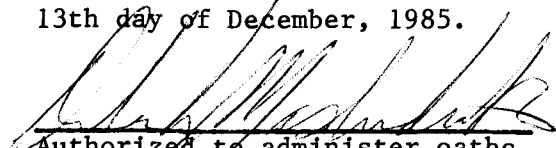
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Joy A. Bobrow, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joy A. Bobrow
Deputy City Register, Queens Co.
90-25 Sutphin Blvd.
Jamaica, NY 11435

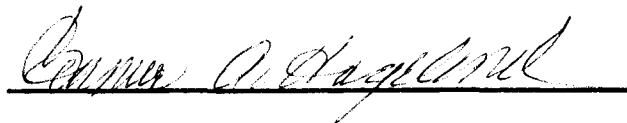
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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.

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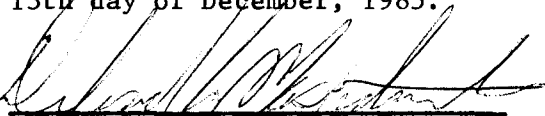
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon W. Bernard Richland, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

W. Bernard Richland
Corporation Council, City of New York
Municipal Building
New York, NY 10007

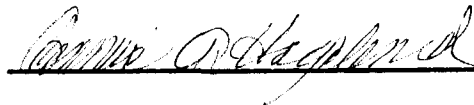
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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.

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13th day of December, 1985.



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STATE OF NEW YORK

STATE TAX COMMISSION

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of :
Sotirios Econopouly :
for Redetermination of a Deficiency or Revision :
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State of New York :
ss.:
County of Albany :

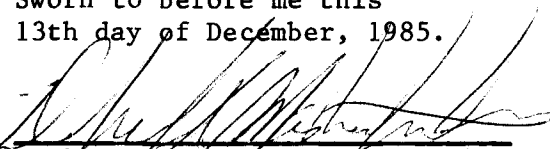
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Samuel Breiter & Co., Inc., the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel Breiter & Co., Inc.
570 7th Ave.
New York, NY 10018

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
13th day of December, 1985.



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pursuant to Tax Law section 174



Connie A. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
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for Redetermination of a Deficiency or Revision :
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County of Albany :

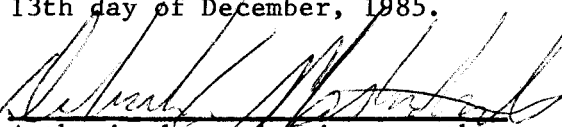
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Ponce DeLeon Federal Savings & Loan Association, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ponce DeLeon Federal Savings & Loan Association
951 Southern Blvd.
Bronx, NY 10459

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
13th day of December, 1985.


Authorized to administer oaths
pursuant to Tax Law section 174



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

December 13, 1985

Sotirios Econopouly
1 Sierks Lane
Roslyn Harbor, New York

Dear Mr. Econopouly:

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
Arnold J. Ross AND
Goldfeld, Charak & Ross
485 Madison Avenue
New York, NY 10022
AND
Joy A. Bobrow
Deputy City Register - Queens Co.
90-25 Sutphin Blvd.
Jamaica, NY 11435
AND
Samuel Breiter & Co., Inc.
570 7th Ave.
New York, NY 10018
Taxing Bureau's Representative

W. Bernard Richland
Corporation Council, City of New York
Municipal Building
New York, NY 10007
AND
Ponce DeLeon Federal Savings & Loan Assoc.
951 Southern Blvd.
Bronx, NY 10459
AND
Robert Mensing
Mortgage & Real Estate Transfer Tax Unit
Building #9, Room 403, State Campus
Albany, NY 12227

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SOTIRIOS ECONOPOULY	:	DECISION
	:	
to Review a Determination under Article 11	:	
of the Tax Law with Reference to Mortgages	:	
Recorded on March 4, 1983 and June 14, 1983.	:	

Petitioner, Sotirios Econopouly, 1 Sierks Lane, Roslyn Harbor, New York, filed a petition to review a determination under Article 11 of the Tax Law with reference to mortgages recorded on March 4, 1983 and June 14, 1983. (File No. 52300).

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 June 25, 1985 at 9:15 A.M. Petitioner appeared by Arnold J. Ross, Esq. 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, Queens County, may properly aggregate two mortgages executed on the same date by the same mortgagor to different mortgagees, encumbering some of the same parcels of real property, for purposes of the mortgage recording tax, thereby subjecting said mortgages to a higher tax rate.

FINDINGS OF FACT

1. Sotirios Econopouly (hereinafter "petitioner") and an unrelated party formed a corporation known as Cattleman Palace, Inc. which purchased The Cattleman Restaurant at 5 East 45th Street, New York, New York. On March 3,

1983, Cattleman Palace, Inc. entered into a loan agreement with Samuel Breiter & Co., Inc. (hereinafter "Breiter") whereby it borrowed from Breiter the sum of \$104,000.00 and obtained a letter of credit in the amount of \$124,000.00 in favor of the seller of The Cattleman Restaurant to cover a portion of the purchase price. Petitioner guaranteed the loan by Breiter for the purchase of The Cattleman Restaurant by the said corporation and, as collateral security for the loan guaranty, he executed a mortgage in the amount of \$250,000.00 to Breiter covering three parcels of property owned by petitioner. The \$250,000.00 mortgage covered not only the amount advanced by Breiter toward the restaurant purchase, but also covered interest until the maturity of the loan, approximately 36 months later. The Breiter mortgage covered three separate parcels of real property, 53-04 to 53-20 Roosevelt Avenue, Queens, New York, 90-01 Roosevelt Avenue, Jackson Heights, New York, and 90-13 Elmhurst Avenue, Jackson Heights, New York. The Breiter mortgage was recorded on March 4, 1983 and the sum of \$3,750.00 was paid to the Register of the City of New York, Queens County, for mortgage recording tax. The Register imposed the mortgage recording tax at the rate of $1\frac{1}{2}$ percent of the principal debt or obligation, the rate applicable to mortgages of less than \$500,000.00.

2. Prior to execution of the Breiter mortgage, on December 15, 1982, petitioner had entered into a contract to purchase property located at 90-13 Elmhurst Avenue, Queens, New York for the sum of \$75,000.00 from Embarques Mundo Packing & Shipping Co., Inc. In conjunction with this purchase, petitioner obtained a mortgage loan commitment from Ponce De Leon Federal Savings and Loan Association (hereinafter "Ponce De Leon") in the amount of \$250,000.00, the proceeds of which were to be used to purchase the Elmhurst Avenue property and to refinance existing mortgages upon property already owned by petitioner at

90-01 Roosevelt Avenue, Queens, New York. On March 3, 1983, petitioner executed a mortgage to Ponce De Leon in the amount of \$250,000.00, covering the properties located at 90-13 Elmhurst Avenue and 90-01 Roosevelt Avenue, Queens, New York. The Ponce De Leon mortgage was recorded on June 14, 1983. At the time of the recording of said mortgage, the Register of the City of New York, Queens County, imposed the mortgage recording tax at the rate of 2½ percent of the principal debt or obligation, the rate applicable to mortgages of \$500,000.00 or more. The Register took the position that the Breiter mortgage and the Ponce De Leon mortgage had to be aggregated since the principal debt or obligation secured by the two mortgages, in the aggregate, was \$500,000.00. In accordance with the ruling of the Register, petitioner paid a mortgage recording tax of \$5,625.00 and has requested a refund of \$1,875.00, the difference between the mortgage recording tax paid and \$3,750.00, the amount of mortgage recording tax which would have been due had the mortgages not been aggregated.

3. Petitioner maintains that the principal amounts of the two mortgages should not have been aggregated since each was a separate mortgage to separate mortgagees with different payment terms, for unrelated purposes. In addition, petitioner contends that the Breiter mortgage covered a parcel of real property not included in the Ponce De Leon mortgage, i.e., 53-04 to 53-20 Roosevelt Avenue, Queens, New York. The Audit Division of the Department of Taxation and Finance agrees with petitioner that, under the facts of this case, the mortgages should not have been aggregated. The City of New York contends, however, that aggregation was proper since each mortgage covered two identical parcels of real property (90-13 Elmhurst Avenue and 90-01 Roosevelt Avenue, Queens, New York) and each was recorded within approximately three months of the other.

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. In the instant case, the two mortgages were held by separate and unrelated mortgagees. The Breiter mortgage was executed to guarantee funds advanced by Breiter to enable a corporation to purchase The Cattleman Restaurant. The Ponce De Leon mortgage was executed to enable petitioner to purchase a parcel of real property and to refinance existing mortgages on another parcel owned by petitioner. There was, therefore, no basis for the recording officer to aggregate the two 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).

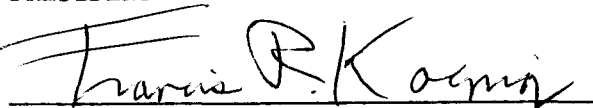
D. That the petition of Sotirios Econopouly is granted and the sum of \$1,875.00 is to be refunded, together with such interest as may be lawfully owing.

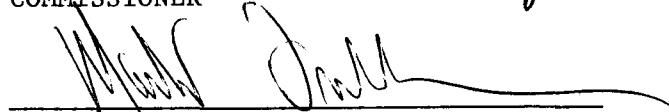
DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985


PRESIDENT


COMMISSIONER


COMMISSIONER