

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Elmhurst Queens Boulevard Homes, Inc. : AFFIDAVIT OF MAILING

to Review a Determination under Article 11 of :
the Tax Law with Reference to Mortgages :
Recorded in 1983 & 1984. :

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 19th day of June, 1986, he/she served the within notice of Decision by certified mail upon Elmhurst Queens Boulevard Homes, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Elmhurst Queens Boulevard Homes, Inc.
25 W. 43rd Street
New York, 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
19th day of June, 1986.

Janet M. Snay

David J. Rancilli
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
Elmhurst Queens Boulevard Homes, Inc. : AFFIDAVIT OF MAILING

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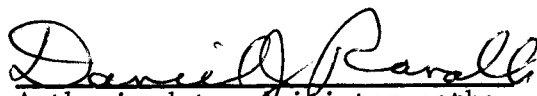
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 19th day of June, 1986, he served the within notice of Decision by certified mail upon Bernard Finkel, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard Finkel
Argiriou & Finkel
666 Third Ave.
New York, NY 10017

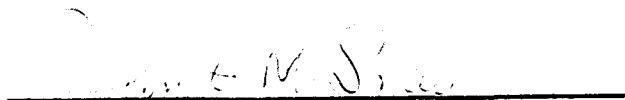
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
19th day of June, 1986.



Authorized to administer oaths
pursuant to Tax Law section 174



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

June 19, 1986

Elmhurst Queens Boulevard Homes, Inc.
25 W. 43rd Street
New York, 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
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:
Bernard Finkel
Argiriou & Finkel
666 Third Ave.
New York, NY 10017

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ELMHURST QUEENS BOULEVARD HOMES, INC.	:	DECISION
	:	
to Review a Determination under Article 11	:	
of the Tax Law with Reference to Mortgages	:	
Recorded in 1983 and 1984.	:	

Petitioner, Elmhurst Queens Boulevard Homes, Inc., 25 West 43rd Street, New York, New York, filed a petition to review a determination under Article 11 of the Tax Law with reference to mortgages recorded in 1983 and 1984 (File No. 56795).

A 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 March 4, 1986 at 10:45 A.M. Petitioner appeared by Argiriou & Finkel, Esqs. (Bernard Finkel, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, 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, for purposes of the mortgage recording tax, ten mortgages, certain of which were executed on the same date, all executed and delivered by the same mortgagor to the same mortgagee, encumbering five separate lots, thereby subjecting said mortgages to a higher tax rate.

FINDINGS OF FACT

On July 15, 1985, the parties herein entered into a written stipulation of facts, the contents of which are summarized in Findings of Fact "1" through "3".

1. Elmhurst Queens Boulevard Homes, Inc. (hereinafter "petitioner") is engaged in the construction of three-family houses within the County of Queens, City and State of New York.

2. On September 2, 1983, petitioner duly executed and delivered five separate mortgages, covering separate, contiguous portions of land owned by petitioner on the northerly side of 47th Avenue west of the westerly side of 82nd Street in the Borough and County of Queens, to Astoria Federal Savings and Loan Association (hereinafter "Astoria"). Each of said mortgages was in the principal sum of \$160,000.00.

3. The mortgages were delivered by Astoria to Security Title and Guaranty Company for purposes of recording the same. On September 16, 1983, each of the said mortgages was presented by Security Title and Guaranty Company, as agent for petitioner, for recording at the office of the City Register, Queens County and mortgage recording tax in the amount of \$2,400.00 was tendered to the Register for each mortgage (\$12,000.00 in total), said amount having been computed 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. The Register refused to record the mortgages unless a mortgage recording tax of \$3,600.00 was paid for each mortgage (\$18,000.00 in total). The Register took the position that the five mortgages must be aggregated and, therefore, that the mortgage recording tax rate of $2\frac{1}{2}$ percent was applicable since the principal debt or obligation secured by the five mortgages, in the aggregate, exceeded \$500,000.00. In

accordance with the ruling of the Register, Security Title and Guaranty, as agent for petitioner, paid, under protest, a total mortgage recording tax of \$18,000.00 for the five mortgages, said amount representing tax imposed at the rate of $2\frac{1}{2}$ percent of the aggregated principal debts or obligations of the five mortgages. Petitioner claims that the five 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 in the amount of \$6,000.00, the difference between the mortgage recording tax paid and \$12,000.00, the amount of mortgage recording tax which would have been due had the mortgages not been aggregated.

4. Subsequent to the execution, delivery and recordation of the aforesaid five mortgages, and on the same date on which petitioner conveyed each of the parcels encumbered by the original five mortgages to purchasers thereof, petitioner executed and delivered to Astoria five additional mortgages, one each on each of the five parcels previously encumbered by the mortgages referred to in Findings of Fact "2" and "3". These mortgages were obtained by petitioner at the request of the purchasers of each of the houses who desired to assume a mortgage in a greater amount. These mortgages were as follows:

<u>Date</u>	<u>Address</u>	<u>Amount</u>	<u>Date Recorded</u>
3/28/84	80-33 47th Avenue	\$27,000.00	4/24/84
3/28/84	80-35 47th Avenue	27,000.00	4/24/84
4/9/84	80-29 47th Avenue	27,000.00	5/1/84
4/23/84	80-31 47th Avenue	27,000.00	5/17/84
5/2/84	80-37 47th Avenue	25,000.00	6/1/84

These five mortgages were consolidated with the original five mortgages into a single first lien on each parcel of property and were then extended and assumed by the purchasers of each parcel. The mortgages were presented for recording at the office of the City Register, Queens County and mortgage recording tax,

computed 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, was tendered. The City Register refused to record the mortgages unless a mortgage recording tax computed at the rate of $2\frac{1}{2}$ percent was paid. The City Register claimed that since the aggregate amount of the original mortgages exceeded \$500,000.00, consolidation of the new mortgages with the original mortgages only served to increase the amount by which the mortgages exceeded the \$500,000.00 threshold. Petitioner contends that the proper amount of mortgage recording tax which should have been collected by the City Register was \$1,995.00, or $1\frac{1}{2}$ percent of the total principal debt or obligation of the five mortgages (\$133,000.00). Petitioner was, however, required to pay the sum of \$2,992.50 ($2\frac{1}{2}$ percent of \$133,000.00) and did so under protest and, therefore, requests a refund in the amount of \$997.00.

5. The original five mortgages were obtained by petitioner as construction loans from Astoria as part of an overall commitment which included permanent loans to be assumed by the purchaser of each of the houses upon completion of construction thereof by petitioner. The mortgages contained a building loan agreement which provided that the proceeds from said building loan were to be used by petitioner for construction of a house on each of the separate lots. Each of the three-family houses constructed by petitioner was subsequently sold to a separate purchaser who assumed the mortgage which encumbered the separate lot on which his house was constructed.

6. At the time at which the original five mortgages and the subsequent five mortgages were recorded, the properties encumbered by said mortgages consisted of a single tax lot. Ultimately, the single tax lot was subdivided into separate tax lots. It is the contention of the City of New York that the

City Register properly aggregated the mortgages herein since each mortgage was secured by a parcel of land made up of a single tax lot.

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 of 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 there is no statutory provision for aggregating mortgages because they apply to contiguous portions of a single tax lot, are between the same mortgagor and mortgagee or are presented for recording at the same time. In the instant case, each of the original five \$160,000.00 mortgages were building loan mortgages to secure building loans to petitioner by Astoria, the proceeds of which were used by petitioner to construct three-family houses on each of five contiguous parcels of what originally consisted of a single tax lot. At the request of the ultimate purchasers of the three-family houses, petitioner obtained additional mortgages on each parcel which were consolidated with the original mortgage, extended and assumed by the purchaser. Even when aggregated with the original \$160,000.00 mortgage, none of the consolidated mortgages on any single parcel had a principal debt or obligation of \$500,000.00 or more. There was, therefore, no basis for the Register of the City of New York, Queens County to aggregate the five original \$160,000.00 mortgages and no basis for said Register to aggregate the five subsequent mortgages and impose the mortgage recording tax on the recordation thereof 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 Elmhurst Queens Boulevard Homes, Inc. is granted and the sum of \$6,997.00 is to be refunded, together with such interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986



PRESIDENT



COMMISSIONER



COMMISSIONER