

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
Esorby 57th Street Corporation	:	
	:	AFFIDAVIT OF MAILING
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with Reference to	:	
a Mortgage Recorded on March 17, 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 29th day of April, 1985 he served the within notice of Decision by certified mail upon Esorby 57th Street Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Esorby 57th Street Corporation  
380 Madison Avenue  
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
29th day of April, 1985.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

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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 29th day of April 1985, he served the within notice of Decision by certified mail upon William T. Livingston, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William T. Livingston  
Bachner, Tally, Polevoy, Misher & Brinberg  
380 Madison 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  
29th day of April 1985.

David Parchuck

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

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Esorby 57th Street Corporation	:	
		AFFIDAVIT OF MAILING
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with Reference to	:	
a Mortgage Recorded on March 17, 1982.	:	

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

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 29th day of April, 1985, he served the within notice of Decision by certified mail upon Chase Manhattan Bank, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Chase Manhattan Bank  
1 Chase Manhattan Plaza  
New York, NY 10005

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  
29th day of April, 1985.

David Parachuk

Bernie A. Hegeland  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Esorby 57th Street Corporation	:	
		AFFIDAVIT OF MAILING
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with Reference to	:	
a Mortgage Recorded on March 17, 1982.	:	

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

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 29th day of April, 1985, he 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.

Sworn to before me this  
29th day of April, 1985.

David Paruch

Annex A. Hagmann  
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	:	
Esorby 57th Street Corporation	:	
for Redetermination of Mortgage Recording Tax	:	AFFIDAVIT OF MAILING
under Article 11 of the Tax Law with Reference to	:	
a Mortgage Recorded on March 17, 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 29th day of April, 1985, he served the within notice of Decision by certified mail upon George Faeth - Commissioner, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Faeth - Commissioner  
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  
29th day of April, 1985.

David Parchuck

Annie R. Hagellum  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Esorby 57th Street Corporation	:	
		AFFIDAVIT OF MAILING
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with Reference to	:	
a Mortgage Recorded on March 17, 1982.	:	

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

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 29th day of April, 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  
Room 403, 4th Fl.  
Building No. 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  
29th day of April, 1985.

David Paruch

Barbara P. Haglund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

April 29, 1985

Esorby 57th Street Corporation  
380 Madison Avenue  
New York, NY 10017

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 AND  
William T. Livingston  
Bachner, Tally, Polevoy, Misher & Brinberg  
380 Madison Ave.  
New York, NY 10017  
AND  
Chase Manhattan Bank  
1 Chase Manhattan Plaza  
New York, NY 10005  
AND  
Taxing Bureau's Representative

W. Bernard Richland  
Corporation Council  
City of New York  
Municipal Building  
New York, NY 10007  
AND  
George Faeth - Commissioner  
City Register - New York County  
31 Chambers St.  
New York, NY 10007  
AND  
Robert Mensing  
Mortgage & Real Estate Transfer  
Tax Unit  
Room 403, 4th Fl.  
Building No. 9, State Campus  
Albany, NY 12227

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
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of	:	
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ESORBY 57TH STREET CORP.	:	DECISION
	:	
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with Reference	:	
to a Mortgage Recorded on March 17, 1982.	:	

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Petitioner, Esorby 57th Street Corp., 380 Madison Avenue, New York, New York 10017, filed a petition for redetermination of mortgage recording tax under Article 11 of the Tax Law with reference to a mortgage recorded on March 17, 1982 (file No. 44626).

On August 3, 1984, petitioner, by its representatives, Bachner, Tally, Polevoy, Misher & Brinberg, Esqs., filed a waiver of formal hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing record. After due consideration, the Commission renders the following decision.

ISSUE

Whether the retroactive application of an increase to the mortgage recording tax is constitutional.

FINDINGS OF FACT

1. Petitioner, Esorby 57th Street Corp., is a corporation organized under the laws of the State of New York with its principal office and place of business in New York City. On March 11, 1982 petitioner delivered a mortgage in the amount of \$9,000,000.00 to The Chase Manhattan Bank (National Association). The real property subject to the mortgage was the premises known as 333-349 West 57th Street and 348-356 West 58th Street, New York, New York. The mortgage



was recorded at the office of the City Register, County of New York on March 17, 1982. Petitioner paid paid mortgage recording tax in the amount of \$191,250.00.

2. On March 10, 1983, the City Register, New York County advised petitioner as follows:

"In April of 1982, New York State increased the rate of tax imposed upon mortgages totaling \$500,000 or more. The only exceptions to this higher rate of tax were mortgages secured by one, two or three-family homes, individual cooperative apartments or individual condominium units. The legislation creating this change became effective on February 1, 1982. It applies to all mortgages recorded on or subsequent to that date.

Since you are a party to one such mortgage (see information below), we are alerting you to the fact that an incorrect amount of tax was paid at the time it was recorded.

The tax should have been paid at the rate of \$2.125 per \$100 of assessed value. Instead, it was paid at the lower rate which was in effect prior to February 1, 1982. Accordingly, the difference between these two rates must be paid in order to properly satisfy the Mortgage Recording Tax."

The letter informed petitioner that an additional amount of \$56,250.00 was due within 30 days. On March 16, 1983, petitioner paid the additional amount due by a check containing the notation: "This check is paid under protest and payor reserves all of its rights under any applicable law, regulation or statute." On June 1, 1983, petitioner applied for a refund of the \$56,250.00 paid.

3. Petitioner does not challenge the amount of tax assessed, only the constitutionality of the retroactive application of the increase.

#### 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 was 50 cents for each \$100.00 of principal debt which was increased to \$1.125 for each \$100.00. Petitioner's mortgage was recorded on March 17, 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, 477 N.Y.S. 2d 272 [Sup. Ct., New York County]).

C. That the petition of Esorby 57th Street Corp. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

APR 29 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
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ESORBY 57TH STREET CORP.	:	DECISION
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for Redetermination of Mortgage Recording Tax	:	
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ISSUE

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3. Petitioner does not challenge the amount of tax assessed, only the constitutionality of the retroactive application of the increase.

#### 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

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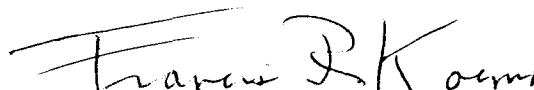
B. That the laws of New York State are presumed to be constitutionally valid at the administrative level of the State Tax Commission. Moreover, the retroactive application of the increase provided for in section 253-a of the Tax Law has been found to be constitutional as "an appropriate exercise of Legislative power..." (Beaumont Co. v. State of New York, 477 N.Y.S. 2d 272 [Sup. Ct., New York County]).


C. That the petition of Esorby 57th Street Corp. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER