

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kings Plaza Homes Co. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Recording :
Tax under Article 11 of the Tax Law for a Mortgage :
Recorded on March 18, 1983. :
_____ :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

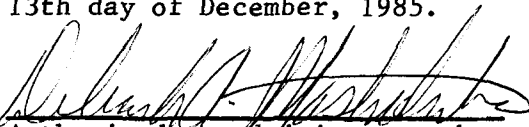
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Kings Plaza Homes Co., the petitioner in the within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

Kings Plaza Homes Co.
7801 18th Ave.
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
13th day of December, 1985.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kings Plaza Homes Co. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Recording :
Tax under Article 11 of the Tax Law for a :
Mortgage Recorded on March 18, 1983. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

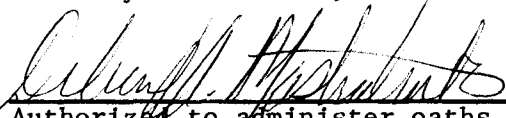
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon William M. Thomas, the representative of the petitioner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

William M. Thomas
Thomas & Graham
36-17 30th Ave.
Long Island City, NY 11103

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 TAX COMMISSION

AFFIDAVIT OF MAILING

Samuel A. Hagelornel

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kings Plaza Homes Co. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Recording :
Tax under Article 11 of the Tax Law for a :
Mortgage Recorded on March 18, 1983. :

AFFIDAVIT OF MAILING

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

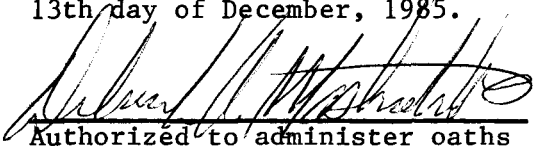
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon W. Bernard Richland, the representative of the petitioner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

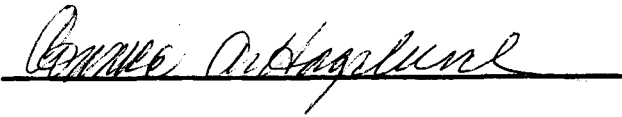
W. Bernard Richland
Corporation Council, City of New York
Municipal Building
New York, NY 10007

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
13th day of December, 1985.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kings Plaza Homes Co. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Recording :
Tax under Article 11 of the Tax Law for a :
Mortgage Recorded on March 18, 1983. :

AFFIDAVIT OF MAILING

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

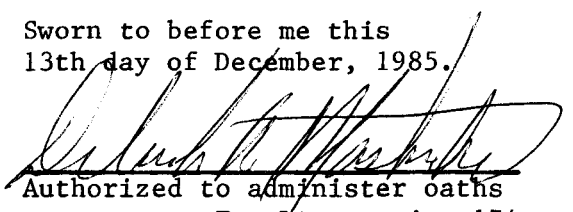
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Robert Mensing, the representative of the petitioner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

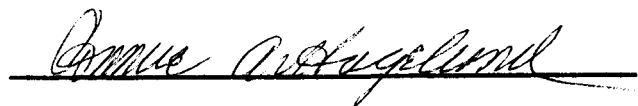
Robert Mensing
Mortgage & Real Estate Transfer Tax Unit
Building #9, Room 403, State Campus
Albany, NY 12227

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.

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

In the Matter of the Petition :
of :
Kings Plaza Homes Co. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Recording :
Tax under Article 11 of the Tax Law for a :
Mortgage Recorded on March 18, 1983. :
_____:

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

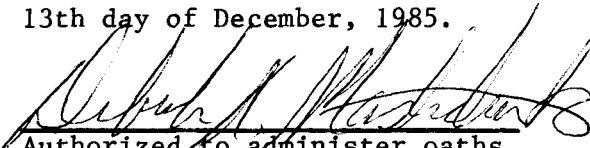
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Camillo F. Penta, the representative of the petitioner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

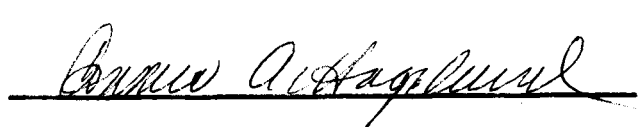
Camillo F. Penta
Deputy City Register, Kings County
Municipal Building, Room One East
Brooklyn, NY 11201

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

Kings Plaza Homes Co.
7801 18th Ave.
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

William M. Thomas AND
Thomas & Graham
36-17 30th Ave.
Long Island City, NY 11103

AND
Financial Federal Savings & Loan Assoc.
42-25 Queens Blvd.
Long Island City, NY

AND
Taxing Bureau's Representative

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

AND
Robert Mensing
Mortgage & Real Estate Transfer Tax Unit
Building #9, Rm. 403, State Campus
Albany, NY 12227

AND
Camillo F. Penta
Deputy City Register, Kings Co.
Municipal Bldg., Rm. One East
Brooklyn, NY 11201

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KINGS PLAZA HOMES CO.	:	DECISION
to Review a Determination under Article 11	:	
of the Tax Law with Reference to Mortgages	:	
Recorded on March 18, 1983.	:	

Petitioner, Kings Plaza Homes Co., 7801 18th Avenue, Brooklyn, New York, filed a petition to review a determination under Article 11 of the Tax Law with reference to mortgages recorded on March 18, 1983 (File No. 53081).

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 2:45 P.M., with all briefs to be submitted by September 26, 1985. Petitioner appeared by Thomas & Graham, P.C. (William M. Thomas, 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 ten mortgages, executed on the same date by the same mortgagor to the same mortgagee covering ten separate tax lots, for purposes of the mortgage recording tax, thereby subjecting said mortgages to a higher tax rate.

FINDINGS OF FACT

1. On February 3, 1983, Kings Plaza Homes Co. (hereinafter "petitioner") duly executed and delivered to Financial Federal Savings and Loan Association (hereinafter "Financial Federal") ten individual real estate mortgages covering

ten separate but contiguous tax lots on East 70th Street in the County of Kings, City and State of New York. Each of the said mortgages was in the principal amount of \$105,000.00 and was to secure payment of a building loan mortgage note, executed simultaneously with each mortgage between petitioner and Financial Federal, in the principal sum of \$105,000.00 to be repaid on January 1, 1984, with interest computed at the rate of 13.50 percent per annum. Negotiations between petitioner and Financial Federal to obtain loans to construct houses on all ten lots were undertaken simultaneously. At the time of the delivering of the mortgages, there was a two-family house under construction on each of the said ten tax lots. Pursuant to an agreement between petitioner and Financial Federal, the ultimate purchaser of each of the ten lots, after completion of the construction of a two-family house on the lot by petitioner, was to assume the existing mortgage on said lot subject to a change in terms to convert each mortgage to a residential purchase money mortgage. Each of the ten lots, improved by a two-family house constructed by petitioner, was subsequently sold to a separate purchaser within a three or four month period, each on a different date.

2. On March 18, 1983, each of the said mortgages was presented for recording at the office of the City Register, Kings County, and mortgage recording tax in the amount of \$1,550.00 was tendered to the Register for each mortgage, 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 \$2,362.50 was paid for each mortgage. The Register took the position that the ten mortgages must be aggregated and, therefore, that the mortgage recording tax rate of $2\frac{1}{4}$ percent was

applicable as the principal debt or obligation secured by the ten mortgages, in the aggregate, exceeded \$500,000.00. In accordance with the ruling of the Register, petitioner paid, under protest, a total mortgage recording tax of \$2,362.50 to record each mortgage for a total of \$23,625.00 for the ten mortgages. Petitioner requests a refund in the amount of \$812.50 per mortgage for a total refund claimed in the amount of \$8,125.00. Petitioner contends that the mortgage recording tax for each said mortgage should have been computed at the rate of $1\frac{1}{2}$ percent of the principal debt or obligation thereby resulting in a mortgage recording tax of \$1,575.00 per mortgage, less an exemption of $\frac{1}{4}$ of 1 percent on the first \$10,000.00 of the principal debt or obligation for one or two-family dwellings which amounts to \$25.00 per mortgage, for a total mortgage recording tax due of \$1,550.00 per mortgage, or \$15,500.00 for all ten mortgages.

3. Petitioner maintains that the principal amounts of the ten mortgages should not have been aggregated since each mortgage secured a building loan mortgage note on each of ten separate tax lots. In addition, petitioner contends that the purpose of obtaining separate loans secured by separate mortgages on each lot was to facilitate transfer to the ultimate purchaser, since each lot was sold by petitioner on a different date and was sold subject to petitioner's mortgage on said lot. 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 for purposes of computing the mortgage recording tax rate. The City of New York, however, contends that there was a unified, integrated plan for construction of a series of two-family houses on ten separate tax lots between one mortgagor and one mortgagee. The City of New York further maintains that there was a single negotiation for all

of the notes and mortgages, that the terms of all of the mortgages are identical and that there was, in effect, one unified transaction with a total indebtedness exceeding \$500,000.00 and, as such, the ten mortgages were properly aggregated and taxed at a higher rate applicable to mortgages securing a principal debt or obligation of \$500,000.00 or more.

CONCLUSIONS OF LAW

A. That subdivision 1 of section 253 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.)

B. That subdivision 1-a(a) of section 253 of the Tax Law imposes an additional tax of twenty-five cents on each \$100.00 and each remaining major fraction thereof of principal indebtedness, with certain exceptions not applicable herein. Subdivision 2(a) of section 253 imposes an additional tax of twenty-five cents on each \$100.00 and each remaining major fraction thereof of principal indebtedness "saving and excepting the first ten thousand dollars of such principal debt or obligation in any case in which the related mortgage is of real property principally improved or to be improved by a one or two family residence or dwelling."

C. 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.

D. 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 statutory provision for aggregating mortgages because they apply to contiguous lots, are between the same mortgagor and mortgagee or are presented for recording at the same time. In the instant case, each of the ten mortgages were building loan mortgages to secure ten separate building loans to petitioner by Financial Federal, the proceeds of which were used by petitioner to construct a two-family house on each of ten separate tax lots. After construction of each two-family house, petitioner sold the respective house and lot to a purchaser who purchased the property subject to petitioner's existing mortgage, with an adjustment of terms necessary to convert the said mortgage to a residential purchase money mortgage. Petitioner sold the ten lots to ten different purchasers on different dates coinciding with completion of the two-family house on each said lot. There was, therefore, no basis for the Register of the City of New York, Kings County, to aggregate the ten mortgages and 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 even assuming, arguendo, that petitioner formulated a comprehensive plan with Financial Federal to obtain funds for construction of houses on all ten lots and negotiated the terms for all ten loans at the same time, the mortgage recording tax was, nonetheless, improperly imposed and should have been imposed on each mortgage at the rate of mortgages of less than \$500,000.00, less the applicable exemption for one or two-family dwellings set forth in subdivision 2(a) of section 253 of the Tax Law. "The parties to the transaction here in controversy undoubtedly planned its execution in such a manner as to minimize their mortgage recording tax liability. This they had the right to do." (Citations omitted.) Matter of Fifth Ave. Corp. v. Bragalini, 4 A.D.2d 387, 393.

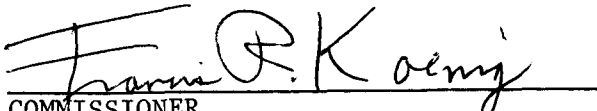
F. That the petition of Kings Plaza Homes Co. is granted and the sum of \$8,125.00 is to be refunded together with such interest as may be lawfully owing.

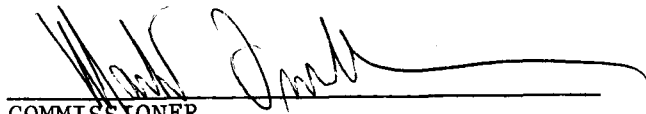
DATED: Albany, New York

DEC 13 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER