


BEFORE THE ALABAMA DEPARTMENT OF REVENUE

In re:) A Proceeding Authorized
) by Section 40-22-2 (8),
Bank of America, N.A.) *Code of Alabama* (1975)
)
Petitioner.)


20120910000341590 1/2 \$15.00
Shelby Cnty Judge of Probate, AL
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MORTGAGE TAX ORDER

Bank of America, N.A., a national banking association ("***Petitioner***") in its Petition for Ascertainment of Mortgage Tax dated August 13, 2012 (the "***Petition***"), has asked the Department of Revenue to fix and determine the amount of mortgage recording privilege tax due pursuant to Section 40-22-2(8), *Code of Alabama* (1975), as amended (the "***Code***"), for the privilege of recording those certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing documents (the "***Mortgages***") from Lion ES Hotels Holdings, LLC and LES Hotel Lessee, LLC (collectively, "***Mortgagor***") to Petitioner, which secure indebtedness and other obligations of Mortgagor to Petitioner (the "***Obligations***"). In addition to the real property and fixtures and related collateral described in the Mortgages and located within the State of Alabama, the Obligations are secured by mortgages, deeds of trust and/or other security instruments (collectively, the "***Security Document***") on additional real property, fixtures and personal property located outside Alabama.

Upon consideration of said Petition and evidence offered in support thereof, the Alabama Department of Revenue finds and determines as follows:

1. That the total maximum amount of the principal indebtedness of the Obligations secured by said Mortgage and the other Security Documents is \$335,000,000.00 in the aggregate, consisting of term and/or open-end or revolving loan facilities from Petitioner to Mortgagor and/or certain affiliates thereof.

2. That the value of the real property and fixtures and related collateral covered by the Mortgage and located within the State of Alabama is approximately \$13,300,000.00, with approximately \$5,500,000.00, or 41.35% of such collateral being located in Montgomery County and \$7,800,000.00, or 58.65% of such collateral being located in Shelby County, and that the total value of all of the real property, fixtures and other collateral conveyed to secure the Obligations and covered by the Mortgages and the other Security Documents (and located within and outside the State of Alabama) is approximately \$674,900,000.00.

3. That the total maximum amount of principal indebtedness of the Obligations to be secured by the Mortgage which is allocable to the State of Alabama and upon which mortgage privilege recording tax is due is \$6,599,500.00, being based on 1.97% of the total value of all real property, personal property and fixtures securing such Obligations.

4. That the Probate Judge of the County wherein the first of the Mortgages will be recorded shall collect the mortgage recording privilege tax in the amount of \$9,899.25 and, pursuant

to § 40-22-2(7) of the Code, after deducting the Probate Judge's 5% commission, make distribution of such tax to the State of Alabama and to the other county named above according to the percentages set out above.

5. That, after the recordation of the Mortgage in such first County and payment of the recording tax amount provided in paragraph 4 above, the Judge of Probate of the other County named herein shall accept for recording the Mortgage to be recorded in such other County without payment of any additional tax.

6. That no bond is required to be posted and no annual report is required to be filed pursuant to § 40-22-2(2), *Code of Alabama* (1975), as amended, and no additional mortgage recording privilege tax shall be payable if Petitioner pays mortgage recording privilege tax, at the time of recordation of the Mortgage, in the amount set forth in paragraph 4 above, unless and until the aggregate principal amount of the Obligations shall exceed \$335,000,000.00.

IT IS ORDERED, THEREFORE, as follows:

1. That the amount of the principal indebtedness under the Mortgage allocable to Alabama and upon which mortgage recording privilege tax will be due under § 40-22-2, *Code of Alabama* (1975), as amended, is \$6,599,500.00.

2. That the Judge of Probate of the first County in which one of the Mortgages is payable shall collect mortgage recording privilege tax in the amount of \$9,899.25, plus any recording and filing fees which may be due upon recordation of the Mortgage recorded, which tax shall be distributed to the other County and the State of Alabama as provided by law after deducting the commission due to the Judge of Probate of the County where the first of the Mortgages is recorded.

3. That no bond shall be required to be posted and no annual report shall be required to be filed pursuant to § 40-22-2(2), *Code of Alabama* (1975), as amended, and no additional mortgage recording privilege tax shall be payable unless and until the aggregate principal indebtedness of the Obligations secured by the Mortgage shall exceed \$335,000,000.00.

DONE at Montgomery, Alabama, this the 15th day of August, 2012.

Attest:

**STATE OF ALABAMA DEPARTMENT
OF REVENUE**

By: Michael E. Mason
Secretary

By: Cynthia Underwood
Assistant Commissioner of Revenue

[Signature]
Legal Division