

**New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division**

TSB-A-08(1)R
Mortgage Recording Tax
February 15, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M071220A

On December 20, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from the Brooklyn Navy Yard Development Corporation, Brooklyn Navy Yard, Building 292, 63 Flushing Avenue, Unit 300, Brooklyn, New York 11205.

The issue raised by Petitioner, Brooklyn Navy Yard Development Corporation, is whether a mortgage recorded by a not-for-profit local development corporation incorporated under section 1411 of the New York State Not-For-Profit Corporation Law is exempt from the mortgage recording taxes imposed by Article 11 of the Tax Law.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is a not-for-profit local development corporation incorporated under section 1411 of the New York State Not-For-Profit Corporation Law. Petitioner was established and operates exclusively for the charitable, public, or quasi-public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, and bettering and maintaining job opportunities in the city of New York, particularly in the borough of Brooklyn.

Petitioner fulfills its corporate purposes by managing the Brooklyn Navy Yard (“Navy Yard”) under a lease with the Navy Yard’s owner, the city of New York. Petitioner manages the leasing of space in the Navy Yard, develops underutilized areas of the Navy Yard, and oversees the ongoing modernization of the Navy Yard’s infrastructure. Through its activities, Petitioner attracts new industry to Brooklyn and facilitates the development and retention of industry, thereby lessening the burdens of government and acting in the public interest.

Petitioner seeks to create additional employment opportunities by developing unoccupied and underutilized portions of the Navy Yard into modern industrial space that would be leased to businesses that would provide jobs that would otherwise not exist in Brooklyn or the city of New York. As part of the expansion plan, Petitioner has approached various commercial banks and other lending institutions to help it finance the creation of additional industrial space in the Navy Yard. The lenders have expressed interest in providing Petitioner with a loan for this purpose.

The loan would be secured by a mortgage (or an assignment of rents) given by Petitioner, as mortgagor, to the lenders, as mortgagee. As part of the loan documents, Petitioner would

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covenant and agree to arrange for the mortgage to be recorded immediately following the closing of the loan.

Applicable law and regulations

Section 252 of the Tax Law provides, with certain exceptions, that "No mortgage of real property situated within this state shall be exempt, and no person or corporation owning any debt or obligation secured by mortgage of real property situated within this state shall be exempt, from the taxes imposed by this article by reason of anything contained in any other statute, . . ."

Section 1411(f) of the Not-For-Profit Corporation Law provides that "The income and operations of corporations incorporated or reincorporated under this section shall be exempt from taxation."

Opinion

Notwithstanding the language of section 252 of the Tax Law, the Tax Department has considered claims for exemption from various public authorities in New York State based on tax exemptions in their creating statutes and has ruled in certain cases that the recording of mortgages issued by the authorities were exempt from the tax imposed by Article 11 of the Tax Law. This position is consistent with the general rule that where a conflict or variance exists between two enactments relating to the same general subject matter, a later special statute takes precedence against a general statute, and the prior general statute must yield to the later specific or special statute. (*Williamsburg Power Plant Corp. v City of New York*, 255 App Div 214, affd 280 NY 551; *First National Bank and Trust Co. v Village of Saltaire*, 256 App Div 156).

Therefore, in accordance with the rationale set forth in *Williamsburg Power Plant Corp. v City of New York*, *supra*, and *First National Bank and Trust Co. v Village of Saltaire*, *supra*, since Petitioner is incorporated under section 1411 of the Not-For-Profit Corporation Law, and since section 1411(f) of the Not-For-Profit Corporation Law provides that the income and operations of corporations incorporated or reincorporated under such section shall be exempt from taxation, mortgages given by Petitioner are exempt from the mortgage recording taxes imposed by Article 11 of the Tax Law. See *Albany County Business Development Corporation*,

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Adv Op Comm T&F, June 26, 2007, TSB-A-07(3)R; *Greater Syracuse Business Development Corporation*, Adv Op Comm T&F, August 25, 1997, TSB-A-97(54)S, (7)R.

DATED: February 15, 2008

/s/
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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.