

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-13(5)R
Mortgage Recording Tax
October 3, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M130603B

The Department of Taxation and Finance received a Petition for Advisory Opinion from the [REDACTED] (Petitioner). Petitioner asks whether it is an agency, instrumentality, or subdivision of New York State, and thus exempt from paying mortgage recording taxes when it records a mortgage. We conclude that Petitioner is exempt.

Facts

Petitioner is a municipal urban renewal agency created pursuant to General Municipal Law (GML) Articles 15, 15-A, and 15-B. As such, it is a corporate governmental agency, constituting a public benefit corporation.¹ Petitioner owns a parcel of real estate that it contracted to sell to a not-for-profit corporation (Buyer). After the conveyance, Buyer will own the property and direct the construction of low-income housing on the land. In order to advance Buyer's acquisition of the parcel, Petitioner will make a purchase money loan to Buyer and hold a purchase money mortgage on the property. Petitioner will record this mortgage. Buyer expects to receive final financing for the project from another lender and pay off the purchase money mortgage in October 2013.

Analysis

Article 11 of the New York State Tax Law imposes taxes on the recording of mortgages on real property, based on the principal debt or obligation secured by the mortgage being recorded.² Tax Law § 252 provides 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. . . ." Although the mortgage recording tax statute enumerates certain exemptions, none of the enumerated exemptions are applicable here.³ Other exemptions arise under the common law, and still others apply by reason of statutory provisions outside of the mortgage recording tax statutes. Specifically, in cases where a conflict exists between Tax Law § 252 and a specific enactment relating to the same general subject matter, the later specific enactment takes precedence against a general statute, and the prior general statute must yield to the later or specific statute. *See Williamsburgh Power Plant Corp. v. City of New York*, 255 A.D. 214 (2nd Dept. 1938), *aff'd* 280 N.Y. 551

¹ GML § 553.2.

² Tax Law § 253.

³ Tax Law §§ 252, 252-a, 253.3.

(1939). Tax Law §252 was enacted prior to the applicable GML statutes. Finally, it is well established that State agencies, instrumentalities or political subdivisions enjoy immunity from the mortgage recording tax, independent of the statutory exemptions, for property used in the public interest, on the theory that imposition of a tax upon a mortgage held by a State agency is tantamount to a tax upon the agency itself in violation of its immunity from taxation. *See City of New York v. Tully*, 88 A.D.2d 701 (3rd Dep’t 1982); *Hotel Waldorf Astoria Corp. v. State Tax Commission*, 86 A.D.2d 330, 334 (3rd Dep’t 1982). This principle was adopted into § 644.1 of the mortgage recording tax regulations that provide: “(a) The recording of the following mortgages involving the State or the Federal Government is exempt from the taxes described in Part 642 of this Title: (1) mortgages where the mortgagor or mortgagee in New York State or any of its agencies, instrumentalities or political subdivisions, to the extent immune from such taxation”

Petitioner is a municipal urban renewal agency, created pursuant to GML Articles 15, 15-A and 15-B, and declared by its enabling statute to be a governmental agency and instrumentality.⁴ As such, it is deemed to serve a public purpose - in this instance, facilitating the construction of new low-income housing - and, thus, is accorded rights and powers deemed essential to the public interest for which public funds may be expended.⁵ The GML provides that the property, income and operations of a municipal urban renewal agency are exempt from taxation.⁶ Because the GML statutory exemption accorded Petitioner was enacted after Tax Law § 252 and is specific as to municipal urban renewal agencies such as Petitioner, as the later enacted status, it will take precedence over Tax Law §252. *See Williamsburgh Power Plant Corp. v. City of New York*, supra. If Petitioner records the mortgage given by Buyer, we conclude that Petitioner is exempt from paying the mortgage recording tax.

DATED: October 3, 2013

/S/

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Deputy Counsel

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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

⁴ GML § 553.2.

⁵ GML § 551.

⁶ GML § 560, as added by the Laws of 1962, c. 921, § 1.