

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-93 (13) R
Mortgage
Recording Taxes
June 29, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M930401B

On April 1, 1993, a Petition for Advisory Opinion was received from Empire State Certified Development Corporation, c/o New York Business Development Corporation, 41 State Street, Albany, New York 12207.

The issue raised by Petitioner, Empire State Certified Development Corporation, is whether mortgages recorded by a Not-For-Profit Local Development Corporation, incorporated or reincorporated pursuant to Section 1411 of the New York State Not-For-Profit Corporation Law are exempt from the mortgage recording taxes imposed by Article 11 of the Tax Law, Tax on Mortgages.

Petitioner is a Not-For-Profit Local Development Corporation reincorporated under Section 1411 of the New York State Not-For-Profit Corporation Law. Petitioner's operations involve making loans to businesses which are collateralized by mortgages. In furtherance of its operations, Petitioner records the mortgages it holds.

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 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 "[t]he income and operations of corporations incorporated and reincorporated under this section shall be exempt from taxation."

Notwithstanding the language of Section 252 of the Tax Law, this 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 the mortgages the authorities issued were exempt from the tax imposed by Article 11 of the Tax Law, despite the fact that Section 252 on its face makes no provision for such an exemption. 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 reincorporated under Section 1411 of the Not-For-Profit Corporation Law, and Section 1411(f) of the Not-For-Profit Corporation Law provides that the income and operations of

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corporations incorporated or reincorporated under such section shall be exempt from taxation, mortgages given to or by Petitioner are exempt from the mortgage recording taxes imposed by Article 11 of the Tax Law.

DATED: June 29, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.