

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(4)R
Mortgage Recording Tax
November 20, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M000727B

On July 27, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Habitat for Humanity Housing Development Fund Company, Inc., 334 Furman Street, Brooklyn, New York 11201.

The issue raised by Petitioner, Habitat for Humanity Housing Development Fund Company, Inc. is whether section 577(2) of Article XI of the Private Housing Finance Law exempts a housing development fund company from payment of the mortgage recording tax imposed pursuant to Article 11 of the Tax Law when such housing development fund company is the lender/mortgagee.

Petitioner presents the following facts. Habitat for Humanity - New York City ("HFH-NY") is a not-for-profit corporation whose mission is to build simple, decent and affordable housing for clients in need through its volunteer and paid labor force. Petitioner is the contracting entity for HFH-NY. In its capacity as contracting entity, Petitioner holds title to real estate on which projects are constructed until conveyance to the housing recipient. Petitioner also contracts with construction and tradespeople, and purchases construction materials. Petitioner's activities are funded by HFH-NY.

HFH-NY is one of more than 1,500 United States affiliates of Habitat for Humanity International, an ecumenical housing ministry that seeks to eliminate substandard housing throughout the world. HFH-NY was founded as a chapter of Habitat for Humanity International in 1984, when New York City was selected as the site of the first Jimmy Carter Work Project. Since 1984, HFH-NY has built 66 homes in the Bronx, Brooklyn, Manhattan and Queens. HFH-NY builds and rehabilitates these homes with the help of the future homeowners, volunteer labor and tax-deductible donations of money and materials. The homes are sold to families at no profit and are financed with affordable, no-interest loans. The homeowners' monthly mortgage payments are deposited into a revolving Fund for Humanity that is used to build more homes. It is not a giveaway program, but rather a joint venture in which those who benefit from the housing are involved in the work.

In the course of its program, Petitioner enters into twenty to thirty year interest free mortgage loans with low income home buyers in order to finance the costs of construction as inexpensively as possible. To secure repayment of these loans, the homeowners give Petitioner a mortgage and Petitioner seeks to record such mortgages exempt from payment of any mortgage recording tax.

Petitioner is duly organized pursuant to Article XI of the Private Housing Finance Law ("Article XI") as a housing development fund company for the exclusive purpose of developing

housing for low income persons and families. Petitioner is sponsoring the financing of housing development projects located in New York State pursuant to Article XI.

Applicable Law

Article 11 of the Tax Law imposes taxes on the recording of mortgages of real property measured by the principal debt or obligation secured or which under any contingency may be secured by the mortgage. Section 252 of Article 11 of the Tax Law, which sets forth the preponderance of the exemptions from the mortgage recording tax, provides, with certain exceptions not relevant here, that "[n]o 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 252 of the Tax Law does not provide a specific exemption from the mortgage recording tax for housing development fund companies.

Subdivision (2) of section 577 of the Private Housing Finance Law provides:

Any inconsistent provision of law to the contrary notwithstanding, mortgages of a housing development fund company shall be exempt from the mortgage recording taxes imposed by article eleven of the tax law.

Additionally, subdivision (b) of section 644.1 of the Mortgage Recording Tax regulations provides, in part:

The recording of the following mortgages is exempt from the taxes described in Part 642 of this Title by reason of express statutory provision relating to such taxes:

* * *

(9) mortgages of housing development fund companies formed pursuant to article 11 of the Private Housing Finance Law (section 577[2] of the Private Housing Finance Law). . . .

Conclusions

An apparent inconsistency exists between the Tax Law and the Private Housing Finance Law. Where a conflict exists between two enactments relating to the same subject matter, the later specific enactment governs the earlier general enactment. (Williamsburgh Power Plant Corp. v. City of New York, 255 App Div 214, affd 280 NY 551.) Therefore, as the pertinent provisions of section 252 of the Tax Law as cited previously in this opinion were enacted in 1909, they must yield to the exemption provisions contained in the Private Housing Finance Law, which were enacted in 1966.

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Indeed, the provisions of Section 577(2) of the Private Housing Finance Law have been incorporated into and are specifically cited in Section 644.1 of the Mortgage Recording Tax regulations.

Based on the foregoing, it is concluded that the mortgage recording tax is not due upon the recording of a mortgage by a housing development fund company where such housing development fund company is the lender/mortgagee. Accordingly, mortgages entered into by Petitioner in connection with the HFH-NY program described above are not subject to the mortgage recording tax.

DATED: November 20, 2000

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