

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

TSB-A-07(3)R
Mortgage Recording Tax
June 26, 2007

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M070329A

On March 29, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from the Albany County Business Development Corporation, 107 Washington Avenue, Albany, New York 12210.

The issue raised by Petitioner, Albany County Business 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.

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 is the administrator of the Al Tech Trust Fund whose operations involve making loans to businesses in Albany County for the purpose of promoting economic growth and business retention in the county. These loans are collateralized by mortgages that are recorded by Petitioner.

In 1976, the Economic Development Administration of the U.S. Department of Commerce awarded a \$10 million grant (the "Grant") under Title IV of the Public Works and Economic Development Act to the New York State Department of Commerce (the "State"). The purpose of the Grant was to make a loan to the Al Tech Specialty Steel Corporation to purchase two steel manufacturing plants, one in Albany County and the other in Chautauqua County. The State was authorized to use the loan repayments to establish the Al Tech Trust Fund (the "Fund") to make loans for economic development in these two counties.

In 2006, Petitioner was authorized to operate the Albany County Al Tech Revolving Loan Fund Program in accordance with the Al Tech Loan Fund's business plan ("Al Tech's Business Plan"), and the portion of the Fund allocated to Albany County was transferred to Petitioner, along with any loans outstanding, cash balances, and other assets. Petitioner is required to hold, invest, and distribute Fund assets in accordance with the terms of the Grant and Al Tech's Business Plan, which both contemplate Petitioner making loans to businesses in Albany County for the purpose of promoting economic growth and business retention in the county.

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 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 to Petitioner are exempt from the mortgage recording taxes imposed by Article 11 of the Tax Law. See *Greater Syracuse Business Development Corporation*, Adv Op Comm T&F, December 22, 1995, TSB-A-95(16)R.

DATED: June 26, 2007

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Taxpayer Guidance Division

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.