

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

TSB-A-94 (9) R  
Mortgage Recording  
Taxes  
July 11, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M940607C

On June 7, 1994, a Petition for Advisory Opinion was received from Title Insurance Rate Service Association, Inc., 2 Park Avenue, 3rd Floor, New York, New York 10016.

The issue raised by Petitioner, Title Insurance Rate Service Association, Inc., is whether the recording of a reverse mortgage containing provisions for the compounding of interest is subject to the mortgage recording taxes imposed under Article 11 of the Tax Law.

Petitioner is contemplating filing with the New York State Department of Insurance an endorsement to be used with the making of reverse mortgages. This endorsement contemplates the addition of compound interest to the debt secured by the mortgage. The compound interest may be secured as either principal indebtedness or additional interest.

Section 252-a of the Tax Law, as amended by L. 1993, c. 613, effective December 2, 1993, provides, in part, as follows:

\*

\*

\*

2. Reverse mortgages conforming to the provisions of section two hundred eighty or two hundred eighty-a of the real property law securing obligations of mortgagors or exempted therefrom pursuant to subdivision four of section two hundred eighty or subdivision four of section two hundred eight-a of the real property law shall be exempt for any tax or fee imposed by this article. In each case where an exemption is claimed under this subdivision, the lender shall provide documentation in a format approved by the commissioner of taxation and finance to enable recording officers to affirmatively determine when a mortgage being presented for recording is a reverse mortgage conforming to such provisions of the real property law and entitled to an exemption under this subdivision. When such documentation is not furnished, the maximum principal debt or obligation which shall be the measure of the tax imposed by and pursuant to the authority of this article in the case of a reverse mortgage shall be the proceeds of the loan which the authorized lender is obligated to lend the borrower at the execution of such mortgage or at any time thereafter but determined without regard to any contingency relating to the addition of any unpaid interest to principal or relating to any percentage of the future appreciation of the property securing the loan as consideration or additional consideration for the making of the loan. Provided, however, if subsequent to the recording of such mortgage, the proceeds which the authorized lender is obligated to lend the borrower are increased at any time, such new or further indebtedness or obligation shall be the measure of

the tax at such time unless at that time an exemption is applicable under the first sentence of this subdivision or otherwise. (emphasis added)

Section 280 of the Real Property Law pertaining to reverse mortgage loans for persons sixty years of age or older, effective December 2, 1993, provides, in pertinent part, as follows:

\* \* \*

(a) Reverse mortgage loans. A loan which is secured by a first mortgage on real property improved by a one- to four-family residence or condominium that is the residence of the mortgagor(s) the proceeds of which are advanced to the mortgagor(s) during the term of the loan in equal installments, in advances through a line of credit or otherwise, in lump sums, or through a combination thereof.

\* \* \*

4. The banking board shall adopt those rules or regulations as it considers appropriate to govern reverse mortgage loans made pursuant to this section. No reverse mortgage loan shall be made unless it conforms to the requirements of this section and such rules and regulations as the banking board may adopt except those reverse mortgage loans made pursuant to section two hundred eighty-a of this article. A reverse mortgage loan made by any authorized lender, national banking association, federal savings and loan association or federal credit union in conformity with applicable federal laws and regulations specifically regulating reverse mortgage loans shall be deemed to conform to such rules and regulations as the banking board has expressly declared to be neither preempted by, nor otherwise inconsistent with such federal laws or regulations. Those rules or regulations shall include, but are not limited to, the form and contents of any disclosure statement, with the exception of the counseling statement prepared by the New York State office for the aging pursuant to paragraph (g) of subdivision two of this section, that authorized lenders must provide to mortgagors.

Nearly identical language appears in Section 280-a of the Real Property Law pertaining to reverse mortgage loans for persons seventy years of age or older.

Section 79.1(a) of the New York State Banking Board Regulations provides as follows:

Section 79.1. Authorization to make reverse mortgage loans. (a) Notwithstanding any provisions of law or regulation to the contrary, Section 6-h of the Banking Law, Sections 280 and 280-a of the Real Property Law and this Part constitute the exclusive authority for lenders, as that term is defined in Section 79.2 of this Part, to make or participate in reverse mortgage loans and, in connection

TSB-A-94 (9) R  
Mortgage Recording  
Taxes  
July 11, 1994

therewith, to compound interest. General Regulations of the Banking Board Parts 38, 39, 80 and 82 shall not apply to the origination of or participation in reverse mortgage loans.

Accordingly, pursuant to Section 280 and 280-a of the Real Property Law, Section 6-h of the Banking Law and Section 79.1 of the Banking Board Regulations lenders are authorized to make and participate in reverse mortgage loans and, in connection therewith, to compound interest. Therefore, pursuant to Section 252-a of the Tax Law the recording of a reverse mortgage loan, including the recording of a reverse mortgage loan containing a provision for the compounding of interest, is not subject to the mortgage recording taxes imposed under Article 11 of the Tax Law.

DATED: July 11, 1994

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

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