

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

TSB-A-13(1)R  
Mortgage Recording Tax  
February 14, 2013

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M120403C

The Department of Taxation and Finance received a Petition for Advisory Opinion from the [REDACTED] (Petitioner). Petitioner asks whether it is subject to mortgage recording taxes imposed by Article 11 of the Law on a construction loan it procured from [REDACTED] (Bank) which is secured by a mortgage. We conclude that the recording of such a mortgage by Petitioner is not exempt from mortgage recording taxes.

**Facts**

The Petitioner submits the following statement of facts as the basis for the requested advisory opinion:

Petitioner is a free association library, chartered and registered by the Education Department of the State of New York since 1957. The library was deeded to the first board of trustees to promote public welfare by founding and maintaining a public library for the [REDACTED] (Village). This was done by a deed of trust on June 17, 1912. The library now serves all residents of [REDACTED] (school district). Petitioner is a non-profit organization that enjoys tax exempt status pursuant to section 501(c)3 of the Internal Revenue Code. The library is not required to pay federal unemployment taxes. Petitioner is exempt from real property taxes and sales tax in the State of New York. Petitioner is primarily supported through tax payments from the school district.

On March 16, 2012 Petitioner closed a building loan transaction with the bank in the sum of \$9,987,500.00. This is the sum provided for in the proposition which authorized the debt to be carried by the taxpayers. The loan was procured pursuant to the terms of the proposition. The proceeds of such loan are to be used to complete a renovation and restoration of the library building, a historic landmark, located within the village. As a result of the loan closing a sum of \$104,868.75 would be due in accordance of with Article 11 of the NYS Tax Law.

**Analysis**

Article 11 of the New York State Tax Law (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. *See Tax Law § 253*. Section 252 of the Tax Law 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, . . .”

Nevertheless, the mortgage recording tax statute does enumerate certain exemptions. *See Tax Law §§ 252, 252-a, 253.3*. None of the enumerated exemptions are applicable here.

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 section 252 of the Tax Law and a specific enactment relating to the same subject matter, the later specific enactment governs. *Williamsburgh Power Plant Corp. v. City of New York*, 255 A.D. 214 (2<sup>nd</sup> Dep. 1938), *aff'd* 280 N.Y. 551 (1939). The Petitioner correctly notes that free association libraries are exempt from real property taxes and the New York State and local sales tax. However, specific statutory provisions exist for these exemptions. *See, Real Property Tax Law §420-A; Tax Law §116(a)(4)*. Conversely, no specific statutory provisions exempt free library associations from the mortgage recording taxes.

Finally, it is well established that State agencies enjoy immunity from taxation, 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. *Hotel Waldorf Astoria Corp. v. State Tax Commission*, 86 A.D.2d 330, 334 (3<sup>rd</sup> Dep't 1982); *City of New York v. Tully*, 88 A.D.2d 701 (3<sup>rd</sup> Dep't 1982). This principle was adopted into the mortgage recording tax regulations which provide that the recording of mortgages where the mortgagor or mortgagee is New York or any of its agencies, instrumentalities, or political subdivisions, is exempt from taxation to the extent the New York State entity is immune from such taxation. *See*, 20 NYCRR §644.1(a)(1).

Petitioner contends that it serves a public purpose and it should enjoy exemption status as it relates to the mortgage tax and asserts that it acts as a public corporation and as such exists for the public benefit and no other. Petitioner further contends that as a public body it should be entitled to the same exemption as municipal and state agencies. Petitioner maintains that inasmuch as the taxpayers of the school district are paying for the construction loan the exemption would directly benefit the taxpayers.

Thus the issue presented is whether free association libraries are agencies, instrumentalities or political subdivisions of New York State such that they are immune from taxation.

Education Law section 253(2), defines libraries as follows:

“The term ‘public’ library as used in this chapter shall be construed to mean a library, other than professional, technical or public school library, established for free public purposes by official action of a municipality or district or the legislature, where the whole interests belong to the public; the term ‘association’ library shall be construed to mean a library established and controlled, in whole or in part, by a group of private individuals operating as an association, close corporation or as trustees under the provisions of a will or deed; and the term ‘free’ as applied to a library shall be construed

to mean a library maintained for the benefit and free use on equal terms of all the people of a community in which the library is located.”

The Appellate Division has stated that “[i]n view of the definition of a free association library contained in section 253 of the Education Law, it is clear that although such a library performs a valuable public service, it is nevertheless a private organization, and not a public corporation. (See, 6 Opns. St Comp, 1950, p 253.) Nor can it be described as a “subordinate governmental agency” or a “political subdivision” (See, 1 Opns St Comp, 1945, p 487.) It is a private corporation, chartered by the Board of Regents. (See 1961 Opns Atty Gen 105.)” *French v. Board of Educ.*, 424 N.Y.S. 2d 236 (2d Dep’t 1980)). In addition, the New York State Education Department’s website also repeatedly notes that an association library is an independent, “private” organization chartered by the New York State Board of Regents that is not part of a municipality or a school district. The website goes on to state that because free association libraries are not public entities, they are not subject to the civil service or municipal finance laws (See, *What is a Public Library District?*, at <http://www.nysl.nysed.gov/libdev/libspldtools/guide/1what.htm>).

Accordingly, Petitioner is not exempt from the mortgage recording tax imposed under Article 11 of the Tax Law because it does not fall within the enumerated mortgage recording tax statutory exemptions, there is no statutory exemption outside of the mortgage recording tax that specifically exempts free association libraries from the tax and free association libraries are not an agency, instrumentality or political subdivision of New York State.

DATED: February 14, 2013

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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.