

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

TSB-A-13(6)R
Mortgage Recording Tax
October 3, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M130607B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether a mortgage recorded by New York City Land Development Corporation (“LDC”), a not-for-profit local development corporation incorporated under § 1411 of the New York Not-for-Profit Corporation Law, is exempt from the mortgage recording tax (MRT) imposed under Article 11 of the New York State Tax Law.

We conclude that a mortgage recorded by LDC is exempt from the MRT.

Facts

Petitioner (or an affiliate of Petitioner) intends to enter into leases with LDC for certain real property. The Petitioner then will develop an entertainment, retail and hotel project (“Project”) on the lands under such lease. The Project is designed to create additional employment opportunities and catalyze the economic vibrancy of the area by developing unoccupied and underutilized real property into a state-of-the-art retail site.

Under the proposal for the Project, Petitioner will borrow funds from third-party banks (“Lenders”) other than LDC. The funds from the loans will be used for the development costs of the Project. The loans will be secured by one or more mortgages against the Petitioner’s leasehold interest (the “Mortgages”). LDC initially will be a named mortgagee and will record the Mortgages. Although LDC will be named as a mortgagee, all of the rights under the Mortgages will inure to the benefit of the Lenders that will for all purposes be the beneficial owners of the Mortgages. Upon the recording of the Mortgages, LDC will assign to the Lenders all of LDC’s right, title and interest in and to the Mortgages. After assigning its interest to the Lenders, LDC will continue to hold a leasehold interest in the real property.

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. Tax Law § 253. As authorized by § 253-a of the Tax Law, Chapter 26 of Title 11 of the New York City Administrative Code provides similarly for property situated within New York City. The tax is imposed on the act of recording a mortgage, rather than on the mortgage itself. See *Franklin Society for Home Building and Savings v. Bennett*, 282 N.Y. 79 (1939); *Matter of Silberblatt, Inc. v. Tax Comm.*, 5 N.Y.2d. 635 (1959).

The MRT statutes enumerate certain exemptions (Tax Law §§ 252, 252-a, 253.3), none of which are applicable here, but other exemptions arise under the common law, and still others may apply by reason of statutory provisions outside of the MRT statutes. Section 252 of the Tax Law states that no mortgage of real property in New York and no person or corporation owning any debt secured by a mortgage on real property situated in New York is exempt from the taxes imposed by Article 11 of the Tax Law by reason of anything contained in any other statute. However, when a conflict exists between two statutes or laws that relate to the same subject matter, the later specific enactment governs the earlier general enactment. *See First National Bank and Trust Co. v. Village of Saltaire*, 256 A.D. 156, (2nd Dep't 1939); *Williamsburg Power Plant Corp. v. City of New York*, 255 A.D. 214, (2nd Dep't 1938), *aff'd* 280 N.Y. 551 (1939)

Section 1411(f) of the New York Not-For-Profit Law provides that “[t]he income and operations of a corporation incorporated or reincorporated under this section shall be exempt from taxation.” Since the pertinent provisions of the MRT were enacted in 1909, they must yield to the exemption provisions contained in the 1969 law creating not-for-profit local development corporations under § 1411 of the New York Not-for-Profit Corporation Law. See TSB-A-07(3)R, TSB-A-97(7)R, TSB-A-95(16)R. Thus, the MRT does not apply where LDC as mortgagee records the LDC mortgage, nor does it apply to the recording of the eventual assignment of the Mortgage by LDC to Lenders. The act of assigning a recorded mortgage, in and of itself, does not create a new mortgage subject to the MRT, provided that the correct MRT has been paid on the recording of the mortgage itself. *See* Tax Law § 255.

DATED: October 3, 2013

/S/

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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.

¹ *See also City of New York v. Tully*, 88 A.D2d 701, (3rd Dept. 1982).

² For recent Advisory Opinions on this issue, see TSB-A-09(2)R, TSB-A-08(1)R, and TSB-A-02(6)R.