

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

TSB-A-85 (1) M  
Mortgage Tax  
July 3, 1985

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M830425A

On April 25, 1983, a Petition for Advisory Opinion was received from United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc., 318 Madison Avenue, Elmira, New York 14901.

The issues raised are, for purposes of exemption from the mortgage recording tax imposed under Article 11 of the Tax Law, (1) whether Petitioner may be considered a "voluntary nonprofit hospital corporation" or (2) whether Petitioner may be considered a "community mental health service company".

On December 17, 1982, Petitioner executed a mortgage of \$2,436,800. The purpose of the mortgage was to construct an intermediate care facility certified by the office of Mental Retardation and Development Disabilities pursuant to the Mental Hygiene Law, Sections 31.02(a)(1) and 31.05 and 14 NYCRR 681.13.

Issue (1)

Section 253 of the Tax Law imposes a mortgage recording tax on mortgages recorded in this state. Claim for exemption is made under section 253(3) which states,

"Notwithstanding any other provision of law to the contrary, the mortgage recording tax shall not be imposed upon any mortgage executed by a voluntary nonprofit hospital corporation."

Since the Tax Law lacks a definition of a "voluntary nonprofit hospital corporation," recourse must be had to other statutory definitions.

Petitioner is incorporated pursuant to the Not-for-Profit Corporation Law of this state. "Voluntary" is generally interpreted as a repetition of "nonprofit." Thus, Petitioner is at least a "voluntary nonprofit corporation."

A "hospital" is defined as:

"a facility or institution engaged principally in providing services by or under the supervision of a physician or, in the case of a dental clinic or dental dispensary, of a dentist, for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, public health center, diagnostic center, treatment center, dental clinic, dental dispensary, rehabilitation center other than a facility used solely for vocational rehabilitation, nursing home, tuberculosis hospital, chronic disease hospital, maternity hospital, lying-in-asylum, out-patient department, out-patient lodge, dispensary and a laboratory or central service facility serving one or more institutions. "Public Health Law §2801(1)

Although Petitioner's activities might meet this definition, the same section expressly provides that the term "hospital" does not include:

"an institution, sanitarium or other facility engaged principally in providing services for the prevention, diagnosis or treatment of mental disability and which is subject to the powers of visitation, examination, inspection and investigation of the department of mental hygiene except for those distinct parts of such a facility which provide hospital service." Public Health Law § 2801(1)

Petitioner argues that its Intermediate Care Facility should be considered a hospital corporation because it is required to provide substantial amounts of health-related services. This argument ignores the fact that the Intermediate Care Facility is principally engaged in providing mental disability services and falls under the jurisdiction of the Department of Mental Hygiene. Since nothing indicates that this facility provides distinct hospital service, the facility cannot be called a hospital.

The legislative history of the exemption indicates that it was intended to benefit communities by providing a measure of fiscal relief to voluntary nonprofit hospitals. There was an awareness that other institutions, however deserving, would not qualify for the exemption. Although there may be public benefits in expanding the definition of voluntary nonprofit hospital corporations, such an action would be contrary to the intention of the Legislature.

Accordingly, Petitioner is not exempt from the mortgage recording tax imposed under Article 11 of the Tax Law because it is not a voluntary nonprofit hospital corporation as provided in section 253(3) of the Tax Law.

#### Issue (2)

Exemptions from the mortgage recording tax are available to some mental health facilities. Section 75.17(c) of the Mental Hygiene Law provides that community mental health service companies "shall be exempt from the mortgage recording taxes."

This exemption, however, only applies to companies incorporated under Article 75 of the Mental Hygiene Law which creates a special class of community facilities. The Legislature intended that Article 75 companies have specific powers and limitations. Among the special characteristics was the exemption from the mortgage recording tax.

The facts show that Petitioner was not formed under Article 75 of the Mental Hygiene Law. Despite the similarities between Petitioner's activities and those encouraged by Article 75, Petitioner cannot be called a community mental health service company unless formed under Article 75 of the Mental Hygiene Law.

Accordingly, Petitioner is not exempt from the mortgage recording tax imposed under Article 11 of the Tax Law because it is not a community mental health service company as provided in Section 75.17(c) of the Mental Hygiene Law.

DATED: July 3, 1985

s/ANDREW F. MARCHESE  
Chief of Advisory Opinions

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