

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

TSB-A-87 (3) R
Real Property Transfer
Gains Tax
April 7, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M870225B

On February 25, 1987, a Petition for Advisory Opinion was received on behalf of New York State Teachers' Retirement System located at 10 Corporate Woods Drive, Albany, N.Y. 12211.

The issue raised is whether mortgages granted to the New York State Teachers' Retirement System on real property located in New York State and recorded in New York State are exempt from the mortgage recording taxes imposed by Article 11 of the Tax Law.

Petitioner states that the pertinent facts are as follows:

Petitioner is a public retirement system, created and existing by virtue of Article 11 of the Education Law. It is one of the principal public retirement systems of New York State and, like the New York State Employees' Retirement System, is a defined benefit public pension plan which is statutorily charged with providing and administering retirement benefits for approximately 240,000 retirees and active members. Its membership consists of school teachers and administrators of the public school districts in the State of New York outside of New York City, teachers in the community colleges, colleges and university centers of the State University of New York, and certain employees of the State Education Department. Petitioner is funded by monies it receives (1) from the withholding of state aid otherwise payable to the various public school districts throughout the state, (2) from direct payments from participating public employers in New York State, and (3) from income derived from its investments.

The general administration and responsibility for Petitioner's operation is, by virtue of 504 of the Education Law, vested in a retirement board consisting of ten members. Three of the retirement board members are elected by the Board of Regents of the University of the State of New York. Two administrative officers of the state school system are appointed by the State Commissioner of Education. The Comptroller of New York State or his appointee serves as a member, and one board member, who must be a retired teacher, is appointed by the retirement board. The remaining three members are elected by the members of Petitioner.

The head of the Division of the Treasury in the Department of Taxation and Finance is the statutory custodian of Petitioner's funds. The operation of Petitioner is subject to the supervision of the State Insurance Department. The records of Petitioner are available for public inspection in accordance with the Freedom of Information Law.

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Petitioner is statutorily charged with the duty of investing its funds for the benefit of its members. Petitioner has invested, and expects to continue to invest, a significant portion of its funds in first mortgages on real property located in New York State, as well as elsewhere. The documentation and structure of Petitioner-owned mortgages is similar to that of other governmental investors. All income and benefit derived from Petitioner-owned mortgages inures to the benefit of its members and retirees. In short, Petitioner's mortgage lending activities in New York State are a significant and necessary aspect of its statutory duty to provide retirement benefits for its members and retirees.

It is Petitioner's contention that it is an instrumentality or agency of the State of New York and is, therefore, exempt from the imposition of the mortgage recording taxes imposed by Article 11 of the Tax Law.

Petitioner supports its contention by stating that a clear policy has emerged in New York State exempting Petitioner from state and local taxation of all kinds by virtue of its status as an agency of the State of New York. In addition, Petitioner states that in an opinion of the Internal Revenue Service dated November 19, 1945, the System was held to be an instrumentality of New York State engaged in an essential governmental function and, as such, exempt from federal income taxation. In accordance with the above-mentioned policy, Petitioner is exempt from the payment of state and municipal income taxes.

Petitioner also cites three opinions of the Tax Commission dated August 4, 1971, December 19, 1979, and January 11, 1980, respectively, in which Petitioner was held to be a state agency and, therefore, exempt from sales and use taxes (8/4/71 opinion), stock transfer tax (12/19/79 opinion) and motor fuel tax (1/11/80 opinion). Also cited by Petitioner is the Appellate Division decision, New York Teachers' Retirement System v. Srogi, 84 A.D.2d 912(1981), aff'd 56 N.Y.2d 690 (1982), in which it was held that Petitioner, because it is a state agency, is exempt from real property taxation in New York State.

Sections 252 and 252-a of the Tax Law set forth various exemptions from the mortgage recording taxes imposed under Article 11 of the Tax Law. Petitioner is not included among those exempt by virtue of sections 252 and 252-a. However, it is well established that state agencies enjoy an immunity from taxation independent of the statutory exemptions listed in section 252 of the Tax Law for property utilized in the public interest. Waldorf-Astoria v. State Tax Commission 86 AD2d 330 (1982). It is also well established that Petitioner, like the New York State Employees' Retirement System, is an agency or instrumentality of the state. Furthermore, the fact that Petitioner's property consists of funds loaned to a private party does not negate immunity from taxation since Petitioner's funds are primarily maintained for a public purpose. Waldorf-Astoria v. State Tax Commission, *supra*.

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Accordingly, mortgages granted to the New York State Teachers' Retirement System on real property located in New York State and recorded in New York State are exempt from the mortgage recording taxes imposed by Article 11 of the Tax Law.

DATED: April 7, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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