

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

TSB-A-12(2)R  
Mortgage Recording Tax  
March 6, 2012

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M120103A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the mortgage recording tax is due upon the recording of a bail bond mortgage. We answer in the affirmative.

**Facts**

The Petitioner submits the following statement of facts as the basis for the requested advisory opinion. A person retains the services of a New York State bail bond insurance company/agency to post a bail bond in a New York State Court to secure the release of a criminal defendant. As collateral for the bail bond, the person (mortgagor) pledges real property they own in the State and executes a contingent mortgage and note which is due and payable only in the event of a forfeiture of the bail bond. It is assumed that the mortgage is for a definite amount of money. However, the forfeiture is payable to the People of the State of New York by the bail bond insurance company/agency (mortgagee). The mortgagor never receives any money from the mortgagee. The bond insurance company/agency seeks reimbursement from the mortgagor pursuant to the contingency mortgage to collect the forfeiture money that was paid to the State to satisfy the forfeiture. If forfeiture never occurs, no money ever becomes due and payable to the State or the mortgagee.

**Analysis**

Tax Law §253 imposes taxes due upon the recordation of a mortgage, measured by the principal debt or obligation which is or may be secured thereby. A mortgage is defined as an instrument in writing which imposes a lien on or affects the title to real property or both real and personal property with such property being used as a security for the payment of money or the performance of an obligation ..." (Tax Law §250, 20 NYCRR section 641.6(a)). The mortgage recorded by the mortgagor here neatly fits this statutory definition, as the mortgage described here is a written instrument imposing a lien on real property with such property being used as a security for the payment of money. The recording of the mortgage is not exempt from taxation under Tax Law §252 or any other New York statutory provision.

Therefore, the recording of the mortgage is subject to mortgage recording tax. The fact that proceeds of the mortgage may be transmitted to another party is not relevant to the determination of tax liability here.

DATED: March 6, 2012

/S/  
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DEBORAH R. LIEBMAN  
Deputy Counsel

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.