

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

TSB-A-12(3)R
Mortgage Recording Tax
May 3, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M120203C

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether a mortgage recorded by or on behalf of Petitioner is subject to mortgage recording taxes imposed by Article 11 of the Tax Law. We believe that the recording of such a mortgage by Petitioner is exempt from mortgage recording taxes.

Facts

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

Petitioner was organized under its enabling statute (Chapter 345 of the Laws of 1968, hereinafter "Act") for the public purpose of the coordinated development of office and other facilities in an area contiguous to United Nations (UN) Headquarters in New York City for use by the UN, missions to the UN and other UN related organizations and activities, thereby materially assisting the effectuation of the purposes served by the UN and promoting the interests of the State and City of New York and of the nation (§2.b and c of the Act; §9602.b and c of the Unconsol. Laws). It is a "body corporate and politic constituting a public benefit corporation" (§4.a of the Act; §9604.o of the Unconsol. Laws). The Legislature found and declared that establishing UNDC "is in the public interest," that "it is necessary to grant to [UNDC] the powers provided by [the Act]," and that "the exercise of the rights and powers authorized [in the Act] will serve a public purpose" (§2.d of the Act; §9602d) of the Unconsol. Laws).

Section 13 of the Act (§9613 of the Unconsol. Laws) provides:

"It is hereby found, determined and declared that the creation of the corporation and the carrying out of its purposes is in all respects for the benefit of the people of the city and state of New York and is a public purpose, and that the corporation will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. The income and operations of the corporation shall be exempt from taxation."

Pursuant to §5(3) of the Act (§9605(3) of the Unconsol. Laws), Petitioner has the power to "make contracts, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by

mortgage or pledge of all or any of its real or personal property or any interest therein, wherever situated." Further, pursuant to §5(6) of the Act (§9605(6) of the Unconsol. Laws), Petitioner has the power to "mortgage or pledge, or create a security interest in, ... all or any of its real or personal property, or any interest therein."

Pursuant to the Act, Petitioner has financed, constructed and operates three office buildings on East 44th Street in Manhattan, New York City (the "existing buildings"), in close proximity to the UN Headquarters. Approximately 90 percent of the office space in the existing buildings is leased to and occupied by the UN and its subordinate bodies and agencies.

The City of New York has an ownership or a long-term leasehold interest in the existing buildings, and in a portion of the land on which the existing buildings are located, in each case subject to long-term leases between the City as landlord and Petitioner as tenant. The land owned by the City and the office space in the existing buildings are exempt from real property taxes. Petitioner pays no income taxes.

As provided in Chapter 137 of the Laws of 2011, the Act was amended as of July 15, 2011 to authorize Petitioner to finance and construct the UN Consolidation Project described in Chapter 137, subject to specified conditions, including the signature of a Memorandum of Understanding ("MOU") by the Mayor of New York City and the legislative leaders of the State Legislature no later than October 10, 2011. The MOU, a copy of which is attached to the Petition as Exhibit "B", was signed by the Mayor and the legislative leaders on October 5, 2011. All conditions specified in Chapter 137 and in the MOU are expected to be satisfied at the same time or before Petitioner issues its bonds or other obligations to finance its construction of the UN Consolidation Project. All space in the new building will be leased by Petitioner to the UN.

The Petitioner has retained a team of financial advisors to advise them on the structure and security needed for the financing of the new Project. The financial advisors have expressed the view that Petitioner will be required to execute and deliver a mortgage on the new Project and thereafter have the mortgage recorded to provide additional security for the bonds or other obligations that Petitioner issues to finance the Project.

Analysis

Article 11 of the 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). In addition, a contract or agreement by which the indebtedness secured by any mortgage is increased is deemed a mortgage of real property and is taxable as such upon the amount of the increase (Tax Law §250.2). The mortgage recording tax regulations state that where the mortgagor or mortgagee is New York State or any of its agencies, instrumentalities, or political

subdivisions, the recording of a mortgage is exempt to the extent the New York State entity is immune from such taxation. See 20 NYCRR §644.1(a)(1).¹

The provisions of the Petitioner's enabling Statute make it law that Petitioner is an instrumentality of the State of New York. Further, its operations are exempt from taxation by law. Therefore, we advise that mortgages recorded by Petitioner are exempt from the mortgage recording taxes imposed by Article 11 of the Tax Law.

DATED: May 3, 2012

/S/

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.

¹ See TSB-A-94(1)R (Jan. 28, 1994) (NYS Energy Research and Development Authority exempt from mortgage recording tax); TSB-A-11(1)R (Power Authority exempt from mortgage recording tax). For other recent Advisory Opinions on this issue, see TSB-A-09(1)C, TSB-A-08(1)R, TSB-A-02(2)R and TSB-A-02(6)R.