

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

TSB-A-81 (2) M
Mortgage Tax
September 8, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M810107A

On January 7, 1981, a Petition for Advisory Opinion was received from Citibank, N.A., (as Trustee), c/o Eric Parets, Assistant Vice President, 5 Hanover Square, New York, New York.

The issue raised is whether the issuance of certain series of bonds under an existing recorded Indenture of Mortgage and Deed of Trust, as additional collateral security, to series of bonds issued under a new trust indenture duly recorded covering the same property upon which mortgage recording tax was paid pursuant to Section 259 of the Tax Law, results in further mortgage recording tax due on the bonds given as additional collateral security.

By an Indenture of Mortgage and Deed of Trust ("the first mortgage"), dated September 1, 1951, executed by Long Island Lighting Company ("Lilco") to City Bank Farmers Trust Company, Trusteed Citibank, N.A., successor Trustee ("Citibank"), Lilco has issued series of bonds from time to time.

Prior to June 1, 1975, Lilco executed 22 supplemental indentures creating 26 series of first mortgage bonds securing indebtedness of \$812,000,000. As of June 1, 1975, 23 series of bonds were outstanding, securing \$745,000,000.

On June 1, 1975, Lilco executed to Manufacturers Hanover Trust Company, Trusteed ("MHTC") a new mortgage indenture ("1975 Indenture") providing for the issuance of series of General and Refunding Bonds ("general bonds"). The 1975 Indenture provides, in part, that Lilco will not issue any more mortgage bonds under the first mortgage other than first mortgage bonds to be pledged with MHTC, as Trusteed as additional security for holders of general bonds. These bonds are to be issued in a principal amount up to but not to exceed the principal amount of general bonds issued under the 1975 Indenture.

Each of these supplements to the 1951 and 1975 Indentures were recorded in the offices of the Recording Officers of Nassau, Queens and Suffolk Counties. Mortgage recording tax was paid to the Recording Officer of Nassau County, that being the County wherein the Indentures were first recorded, at recording of the supplements to the 1975 Indenture as follows:

On the following dates Lilco issued five series of first bonds under the 1951 Indenture, which were authenticated by Citibank, and delivered by Lilco to MHTC as security for a first companion series of general bonds contemporaneously issued by Lilco and authenticated by MHTC:

<u>Date</u>	<u>Supplements to 1951 Indenture</u>	<u>Supplements to 1975 Indenture</u>
June 19, 1975	23rd Supplement \$39,000,000	1st Supplement \$80,000,000

Sept. 29, 1975	24th Supplement \$44,000,000	2nd Supplement \$90,000,000
June 3, 1976	25th Supplement \$63,000,000	3rd Supplement \$70,000,000
Dec. 2, 1976	26th Supplement \$50,000,000	4th Supplement \$50,000,000
May 5, 1977	27th Supplement \$50,000,000	5th Supplement \$85,000,000
<u>Date of Record</u>	<u>Supplement to 1975 Indenture</u>	<u>Tax Paid</u>
6/19/75	1st	\$646,055.53
9/29/75	2nd	723,894.67
6/3/76	3rd	563,029.19
12/2/76	4th	401,063.75
5/5/77	5th	694,654.20

No mortgage recording tax was paid upon the recording of Supplements 23 to 27 to the first mortgage, which were recorded on even date with the Supplements to the 1975 Indenture.

Section 259 of the Tax Law provides, in pertinent part, that

" . . . Whenever a further amount is to be advanced under the original mortgage, or shall accrue thereon or become secured thereby, the corporation making such mortgage shall pay the tax on such amount at or before the time when such amount is to be advanced, accrues or becomes secured and shall, at the time of paying such tax, file in the office of the recording officer where such mortgage has been or is first recorded and with the tax commission a statement, verified by the secretary, treasurer or other proper officer, of said corporation of the amount of principal indebtedness to be so advanced, accruing or becoming secured, and the certification of any bond or bonds by the trust mortgagee shall be deemed an advance under this article "

Since the certification of the bonds issued under the first mortgage is deemed an advance, pursuant to Section 259 of the Tax Law, Citibank, as Trustee, would be injured if proper mortgage recording tax was not paid upon the recording of Supplements 23 to 27 to the first mortgage.

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The sole amount advanced in these transactions was advanced under the 1975 Indenture. Section 259 of the Tax Law provides that tax is payable only when a further amount is advanced, accrues thereon or becomes secured by a corporate trust mortgage. No further amount was advanced, accrued thereon or became secured by the first mortgage. Accordingly, no mortgage recording tax was due with respect to the bonds issued under the first mortgage, as evidenced by Supplements 23 to 27 and pledged as further security for bonds issued under Supplements 1 to 5 to the 1975 Indenture, upon which proper tax was paid. This conclusion is in accord with a Declaratory Ruling of the State Tax Commission issued on January 31, 1978 (Declaratory Ruling 78-01).

DATED: April 6, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau