

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

TSB-A-84 (1) M  
Mortgage Tax  
March 29, 1984

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M840123B

On January 23, 1984 a Petition for Advisory Opinion was filed by the State of New York Mortgage Agency, 260 Madison Avenue, New York, New York 10016.

Petitioner inquires as to the applicability of the mortgage taxes imposed under Article 11 of the Tax Law to the recording of mortgages which are part of SONYMA's Forward Commitment Program.

The State of New York Mortgage Agency (hereinafter "SONYMA"), was created by the Legislature in 1970. Its purpose is to "assure a steady flow of production of new housing units during periods when there is an inadequate supply of credit available for new loans for residential housing." (Public Authorities Law, § 2401) The preamble to the enabling law also states that there is a shortage of funds for residential mortgages in the private banking system and that "the drastic reduction in residential construction starts associated with such shortages have caused a condition of substantial unemployment and underemployment in the construction industry which results in hardships to many individuals and families, wastes vital human resources, increases the public assistance burdens of the state and municipalities, impairs the security of family life, impedes the economic and physical development of municipalities and adversely affects the welfare and prosperity of all the people of the state."

Against this economic backdrop, SONYMA was given the following general statutory mandate:

"(1) The purpose of the agency shall be to purchase mortgages from banks within the state during periods when there is an inadequate supply of credit available for new residential mortgage loans and to require such banks to invest an amount equal to the proceeds thereof as rapidly as possible in new mortgages on residential real property for family units within the state." (§2405(1) of Public Authorities Law prior to amendment by Ch. 915 of Laws of 1982)

In the latter part of 1982, the Legislature enlarged the operations of SONYMA, and it was additionally empowered to carry out the following activity:

"to . . . acquire, and contract to acquire, forward commitment mortgages made by banks and to enter into advance commitments to banks for the purchase of said mortgages " (Public Authorities Law, § 2404 (7) (b)).

Petitioner states that SONYMA is beginning to carry out its Forward Commitment Program. In authorizing this program, the Legislature found that: "such activities [of the Forward Commitment Program] by the agency will alleviate a condition in this state which is contrary to the public health, safety and general welfare and which has constituted in the past and from time to time in the future can be expected to constitute a public emergency. It is further found and declared that such purposes are in all respects for the benefit of the people of the state of New York and the agency shall be regarded as performing an essential governmental function in carrying out its purposes and in exercising the powers granted by this title." (Public Authorities Law, § 2405-b(1)).

Prior to the institution of the Forward Commitment Program, SONYMA infused new mortgage credit into the market by buying existing mortgages from a lending institution's portfolio. Now, pursuant to the enlarged authorization given to SONYMA whereby it is empowered to contract to acquire and to acquire forward commitment mortgages, the local lending institution now originates mortgage loans in consideration for SONYMA's promise to purchase such loans. The mortgage given to the local lending institution is then promptly assigned, after recordation, to SONYMA. It is clear that the mortgage loans made by the local lending institution would not be made without SONYMA's promise, in advance, to promptly purchase such loan since, as a condition to purchase under this Program, the local lending institution must certify that the mortgage loan is in addition to mortgages such institution would otherwise have made. (Public Authorities Law, § 2405-b(4)). The local lending institution is, in effect, originating the mortgage loan on behalf of SONYMA. Furthermore, as a condition precedent to the purchase of a forward commitment mortgage, the originating lending institution warrants that such mortgage shall have been properly recorded. (Public Authorities Law, § 2405-b(g)(e)).

With respect to exemption from state taxation of the activities of SONYMA, sections 2412, 2421 and 2422 of the Public Authorities Law provide as follows:

"§ 2412. Property and income

The property of the agency and its income and operations shall be exempt from taxation or assessments of every kind and nature, other than assessments for local improvements; nor shall the agency be required to pay any recording fee or transfer tax of any kind on account of instruments recorded by it or on its behalf."

"§ 2421. Inconsistent provisions of other laws superseded

Insofar as the provisions of this title are inconsistent with the provisions of any other law, general, special or local, the provisions of this title shall be controlling. It is the intent of the legislature that the provisions of this title relating to mortgage commitments and laws be construed liberally so as to effectuate the public and governmental purposes thereof."

"§ 2422. Construction

This title, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes."

Article 11 of the Tax Law imposes taxes on the recording of mortgages of real property measured by the principal debt or obligation secured by such mortgage. Section 252 of such article, applicable to exemptions from the mortgage recording tax, provides that "[N]o mortgage of real property situated within this state shall be exempt, and no person or corporation owning any debt or obligation secured by mortgage of real property situated within this state shall be exempt, from the taxes imposed by this article by reason of anything contained in any other statute..." No specific provision is made in such section for the operations of SONYMA. An apparent inconsistency thus exists between the Tax Law and the statute which created SONYMA. Where a conflict exists between two enactments relating to the same subject matter, the latter specific enactment governs the earlier general enactment. Williamsburgh Power Plant Corp. v City of New York, 255 App. Div. 214, affd 280 NY 551.

Inasmuch as Section 252 of the Tax Law was enacted in 1909, and last amended in 1966, it must yield to the exemption provisions contained in the law creating SONYMA, which were enacted in 1970. Accordingly, if the provisions of the Public Authorities Law exempt from the recording tax the mortgages created pursuant to the Forward Commitment Program, such exemption provisions will prevail.

In carrying out its Forward Commitment Program, the Legislature has declared that SONYMA is performing "an essential governmental function." As part of the overall scheme of the Program set out by the Legislature, the local lending institution records mortgages which SONYMA has previously committed itself to purchase, as authorized in § 2405-b of the Public Authorities Law.

Under the first clause of § 2412 of the Public Authorities Law, the operations of SONYMA are exempt from taxation. The question arises whether the recording of a mortgage on behalf of the agency is a part of the "operations" of SONYMA. Under SONYMA's Forward Commitment Program, the local lending institution originates the mortgage loan on behalf of SONYMA, and such local lending institution acts as an agent of SONYMA in causing the mortgage, which is to be promptly assigned to SONYMA, to be recorded. The mortgage is the very instrument employed by the legislative scheme in achieving SONYMA's statutory objective. Its recordation is then the means to secure SONYMA's financial interest. A tax on the recording would be a tax on the operations of SONYMA, even if not paid directly by SONYMA, since the mortgage loan and the recording of the mortgage are mandated by the statute. The recording of the mortgage is directly on behalf of SONYMA and is a part of its operations with respect to the Forward Commitment Program. Matter of Queens College Student Services Corporation, State Tax Commission, March 17, 1976.

Accordingly, in view of the statutory exemption given to the operations of SONYMA in carrying out an essential governmental function, and particularly in light of the liberal construction which the Legislature directs be accorded to the whole title, it is concluded that the mortgages which arise directly from the operation of SONYMA's Forward Commitment Program are exempt from the mortgage recording taxes imposed by Article 11 of the Tax Law.

DATED: March 19, 1984

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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