

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

TSB-A-93 (12) R
Mortgage
Recording Taxes
June 25, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M930401A

On April 1, 1993, a Petition for Advisory Opinion was received from Tigor Title Guarantee Company, 1211 Avenue of the Americas, New York, New York 10036-8701.

The issue raised by Petitioner, Tigor Title Guarantee Company, is whether additional mortgage recording taxes are due upon the recording of a modification agreement which modifies an existing mortgage to provide that accrued interest on the original mortgage indebtedness which is owing will be paid in a fixed amount at maturity of the mortgage, and that such accrued interest will not be added to principal and will not bear interest.

A mortgage is being modified to provide that the accrued interest which is owing will be deferred and paid in a fixed sum at maturity. The accrued interest will not be added to principal and will not bear interest.

Section 255.1(a) of the Tax Law provides, in part, as follows:

If subsequent to the recording of a mortgage on which all taxes, if any, accrued under this article have been paid, a supplemental instrument or mortgage is recorded for the purpose of correcting or perfecting any recorded mortgage, or pursuant to some provision of covenant therein, or an additional mortgage is recorded imposing the lien thereof upon property not originally covered by or not described in such recorded primary mortgage for the purpose of securing the principal indebtedness which is or under any contingency may be secured by such recorded primary mortgage, such additional instrument or mortgage shall not be subject to taxation under this article, except as otherwise provided in paragraph (b) of this subdivision, unless it creates or secures a new or further indebtedness or obligation other than the principal indebtedness or obligation secured by or which under any contingency may be secured by the recorded or primary mortgage, in which case, a tax is imposed as or provided by section two hundred and fifty-three of this chapter on such new or further indebtedness or obligation. (emphasis added)

A 1909 Opinion of the Attorney General opined that where a mortgage is given for a loan with a provision that no interest is payable until maturity, but the amount to be paid at maturity equals the amount loaned with interest compounded, the mortgage tax should be computed on the total sum due at maturity. In this case, instead of paying over to the mortgagee the interest when it became due, the mortgagor retained it, and proceeded to add it to the amount which he owed the mortgagee and the amount upon which future interest was computed. The substance of the transaction was as if the interest had been actually paid to the mortgagee and the mortgagee then loaned the same amount back to the mortgagor. Thus, the principal obligation of the mortgage was the amount upon which the interest was computed upon after maturity. 1909, Op. Atty. Gen. 530.

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In John P. Napoli, Adv Op Comm T & F, May 28, 1991, TSB-A-91(5)-R, the Commissioner opined that accrued interest loses its character as interest when additional interest is allowed to accrue on the unpaid interest, and thus, becomes part of the principal indebtedness or obligation secured by the mortgage.

The instant case may be distinguished from the Opinion of the Attorney General, supra, and John P. Napoli, supra, in that the modified mortgage agreement provides that the accrued interest being deferred will be paid in a fixed sum at maturity, will not bear interest, and will not be added to the principal amount of the mortgage. Therefore, the modified mortgage agreement does not create or secure a new or further indebtedness or obligation other than the principal indebtedness or obligation secured by the recorded primary mortgage, but merely extends the due date for when the accrued interest is payable. Accordingly, pursuant to Section 255.1(a) of the Tax Law such mortgage modification agreement is a supplemental instrument or mortgage and the recording of such agreement will not be subject to additional mortgage recording taxes.

DATED: June 25, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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