

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ANDREW BRONSKY	:	DECISION
	:	DTA NO. 819926
for Revision of a Determination or for Refund of Real	:	
Estate Transfer Tax under Article 31 of the Tax Law for	:	
the Period November 2002.	:	

Petitioner Andrew Bronsky, 161 West 129th Street, Apt. #1, New York, New York 10027, filed an exception to the determination of the Administrative Law Judge issued on March 3, 2005. Petitioner appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Kevin R. Law, Esq., of counsel).

Petitioner filed a brief in support of his exception and the Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioner filed a reply brief. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner should be granted a refund of real estate transfer tax paid on the transfer of certain real property to him by the New York City Partnership Housing Development Fund Company, Inc.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

On September 18, 2002, petitioner purchased real property located at 163 West 129th Street, New York, New York 10027, for \$423,318.00 from the NYC Partnership Housing Development Fund Company, Inc. ("HDFC"). At the time the deed was presented for filing petitioner filed a New York State transfer tax return and paid \$1,694.00.

The deed in issue contained several restrictive covenants, which provided that petitioner only use the property for residential purposes; that petitioner not discriminate or segregate based on age, race, religion, sex, color, national origin, ancestry, disability, marital status or sexual orientation in the sale or occupancy of the premises; and that petitioner occupy the premises as his primary residence for a specified period of time. In addition, petitioner executed an enforcement mortgage with the City of New York that contained additional covenants which provided that petitioner had to make an additional payment to satisfy secured and unsecured enforcement notes if the property was sold prior to three years after the transfer. In addition, HDFC retained the right to inspect the property.

Although the real property transfer tax return provided for claiming an exemption from tax, none was claimed.

On May 12, 2003, petitioner filed a Real Estate Transfer Tax Claim for Refund, dated May 5, 2003, in which he requested a refund of \$1,693.27. Petitioner contended on the claim form that since the property was purchased from a not-for-profit New York City agency, no real estate transfer tax was due. Attached to the claim form were two letters: the first, from the Internal

Revenue Service (“IRS”) to HDFC, dated September 25, 1984, informed HDFC that the IRS had determined that it was exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code; the second letter, from Maria T. Jones, Deputy Commissioner for Legal Affairs of the NYC Department of Finance, to Alex S. Avitabile, Esq., dated February 13, 1995, informed him that deeds to or by HDFC, a tax exempt entity operated exclusively for religious, charitable or educational purposes, were exempt from New York City real estate transfer tax pursuant to Title II of Chapter 46 of the New York City Administrative Code, in effect as of the date of the letter.

By letter dated May 22, 2003, the Division of Taxation denied petitioner’s refund request, stating in pertinent part:

Section 1405(a) of the New York State Tax Law states in part, that the state of New York, or any of its agencies, instrumentalities, political subdivision [sic] or public corporations shall be exempt from the payment of the real estate transfer tax. Section 575.9 of the Real Estate Transfer Tax Regulation further clarifies the matter by stating that the exemption for certain governmental organization [sic] or entities does not extend to the grantee: that is, if the exempt governmental entity conveyed title to real property to non exempt individual [sic] or entity, there will be a tax due which is payable by the grantee.

As the grantor, NYC Partnership Housing Development Fund Company, Inc. is exempt, the liability for the tax shifts to you, the grantee. The transaction itself is still subject to tax.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge noted that Tax Law § 1402(a) imposes a tax on conveyances of real property where the consideration for the transfer exceeds \$500.00 and that Tax Law § 1404(a) specifies that the real estate transfer tax shall be paid by the grantor, unless the grantor is exempt from the tax, in which case the grantee shall be liable for the tax.

The Administrative Law Judge pointed out that pursuant to Tax Law § 1405(a), the exemption of governmental bodies or persons does not relieve a grantee from them of liability for the tax.

The Administrative Law Judge observed that since petitioner sought the benefit of this exemption, he bore the burden of demonstrating that he came within the reach of the exemption. The Administrative Law Judge considered each of petitioner's arguments that he qualified for exemption. First, the Administrative Law Judge rejected petitioner's argument that he was entitled to an exemption based upon a letter from Maria T. Jones, Deputy Commissioner for Legal Affairs of the NYC Department of Finance, to Alex S. Avitabile, Esq., dated February 13, 1995, which stated that deeds to or by HDFC, a tax exempt entity operated exclusively for religious, charitable or educational purposes, were exempt from real estate transfer tax pursuant to Title II of Chapter 46 of the New York City Administrative Code. The Administrative Law Judge found that whether or not petitioner was exempt from the New York City real estate transfer tax pursuant to section 11-2106(b)(2) of the New York City Administrative Code, the current section of that Code which contained the same provision as referenced in the Jones letter, the New York State Tax Law does not provide the same exemption.

Second, the Administrative Law Judge rejected petitioner's argument that he was an "instrumentality" of the City of New York by virtue of the restrictions and covenants set forth in the deed and mortgage documents and, therefore, exempt from tax pursuant to Tax Law § 1405(a)(1). The Administrative Law Judge found nothing in any of the documentation offered by petitioner that indicated any agreement between HDFC and himself which established that he was an agent or instrumentality of HDFC .

ARGUMENTS ON EXCEPTION

On exception, petitioner argues, as he did before the Administrative Law Judge, that the considerable restrictions placed on the property in the deed and mortgage documents make him an instrumentality of HDFC and, therefore, exempt from the real estate transfer tax pursuant to Tax Law § 1405(a)(1).

OPINION

We find that the Administrative Law Judge completely and adequately addressed the issues presented to him and correctly applied the relevant law to the facts of this case. Petitioner has offered no evidence below, and no argument on exception, that would provide a basis for us to modify the determination in any respect. Thus, we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Andrew Bronsky is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Andrew Bronsky is denied; and

4. The Division of Taxation's denial of petitioner's application for refund, dated May 22, 2003, is sustained.

DATED: Troy, New York
January 19, 2006

/s/Charles H. Nesbitt
Charles H. Nesbitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Robert J. McDermott
Robert J. McDermott
Commissioner