

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
QUEENS COLLEGE STUDENT SERVICES CORPORATION : DETERMINATION  
To Review a Determination under Article 11 :  
of the Tax Law with reference to a Trust :  
Indenture recorded September 2, 1970 between :  
QUEENS COLLEGE STUDENT SERVICES CORPORATION :  
and MARINE MIDLAND GRACE TRUST COMPANY OF :  
NEW YORK and other recorded documents. :  
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Applicant, Queens College Student Services Corporation,  
65-30 Kissena Boulevard, Flushing, New York 11367, has filed an  
application with the State Tax Commission pursuant to Article 11  
of the Tax Law to review a determination by the Miscellaneous Tax  
Bureau that an instrument executed by the applicant and recorded  
on September 2, 1970, was subject to mortgage recording tax.

A formal hearing was held before Paul B. Coburn, Hearing Officer,  
at the offices of the State Tax Commission, Two World Trade Center,  
65th Floor, Room 65-31, New York, New York, on July 18, 1974 at  
1:15 P.M.

The Miscellaneous Tax Bureau was represented by Saul Heckelman, Esq.  
(Martin Schapiro, Esq. of counsel). The applicant was represented  
by Arthur H. Kahn, Esq. The City of New York appeared and was repre-  
sented by Isaac C. Donner, Esq. and Robert J. Metzler, Esq.

ISSUE

Was the trust indenture exempt from mortgage recording tax upon re-recording of the indenture to reflect the issuance of a bond in the aggregate principal amount of \$3,300,000.00 to the United States of America?

FINDINGS OF FACT

1. The Queens College Student Services Corporation ("Corporation") is a nonprofit membership corporation duly incorporated pursuant to section 10 of the Membership Corporation Law of the State of New York to serve the educational and recreational needs of the students of Queens College. The Corporation was empowered by the certification of incorporation to design, construct and maintain a student union facility.

2. Queens College is an education unit of the City University of New York and is administered by the Board of Higher Education. The Board approved the construction of a student union building by a resolution adopted on June 21, 1965.

3. A site for such building was purchased from the City of New York in Block 6517, Lot 1, on the Tax Map of the Borough of Queens, City of New York.

4. In order to finance the project, the Corporation executed a trust indenture to the Marine Midland Grace Trust Company of New York, as trustee, dated as of August 1, 1970. The indenture provided for the issuance of bonds designated as "Queens College Student Services Corporation, Queens College of the City University of New York, Student Union Facilities Bonds of 1970" up to a maximum amount of \$7,200,000.00. To secure payment of principal and interest

on said bonds, Marine Midland, as trustee, received a first mortgage lien on the construction site and all buildings and improvements thereafter erected on that site. Marine Midland also received a first lien on the net revenues derived from the operation of the Student Union Facilities System. Marine Midland took said mortgage and first lien for the equal and proportionate benefit of all holders of the bonds issued or to be issued under and secured by the trust indenture.

5. Under Article VI, section 13 of the indenture, the Corporation covenanted to file, register and record the indenture as a mortgage of real property and to pay all recording and registration taxes and fees incidental to such filing, registration and recording.

6. On September 2, 1970, the trust indenture was recorded in the Registry Office, Queens County, in reel 424 of mortgages, at pages 52 through 162. At the time of this recordation, bonds in the total aggregate principal amount of \$3,900,000.00 had been issued to private underwriters. The City Register required the payment of \$29,250.00 in mortgage recording tax computed upon the value of bonds issued to that date before allowing recordation. The Corporation paid this sum under protest.

7. A loan agreement (Contract No. H(102)-2505) dated as of August 28, 1968 was executed by and between the Corporation and the United States of America (Government) wherein the Government acting by and through the Secretary of Housing and Urban Development agreed to purchase bonds issued by the Corporation. On August 5, 1970, an

amendatory agreement superceding the original agreement was executed. On August 28, 1970, a further amendment was made. In its final form, the agreement between the Government and the Corporation provided that the Government would purchase a single Student Union Facility Bond in the aggregate principal amount of \$3,300,000.00. The stipulated rate of interest was 3% while the agreed term of the loan was fifty years. Security for the loan would be a general obligation of the Corporation additionally secured by a first mortgage on the project including its site and any facilities added to the student union system and by a first lien and pledge of net revenues derived from the operation of the student union facilities. The provisions for security in the 1968 agreement were essentially unchanged in the subsequent amendatory agreement and the August 28, 1970 amendment.

8. On July 15, 1971, the trust indenture recorded on September 2, 1970 was re-recorded to reflect the issuance of the \$3,300,000.00 bond to the Government. The recording officer demanded payment of mortgage recording tax in the amount of \$24,750.00 computed on the basis of the \$3,300,000.00 value of the bond. The mortgage recording tax payment was made by the Corporation under protest.

9. On August 26, 1971, a timely application for a refund of mortgage recording tax paid to the Register of the City of New York was made to the State Tax Commission by the Corporation.

#### CONCLUSIONS OF LAW

A. That, the trust indenture was exempt from mortgage recording tax upon its re-recording to reflect the issuance of the \$3,300,000.00 bond to the United States of America. The United States of America

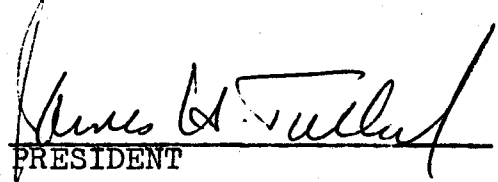
acting through the Department of Housing and Urban Development (HUD), is immune from taxation. An instrumentality used to effect its lawful purposes is similarly immune. The applicant, Queens College Student Services Corporation, executed the trust indenture in order to provide the required security for a prior loan agreement with HUD. The trust indenture cannot, then, be characterized as a purely private instrumentality. To the extent it was utilized to secure a loan granted by HUD, the trust indenture was an instrumentality of the United States of America and was exempt from taxation. (See City of New York v. N.Y.U., 3 AD 2d 954 and Opinion by Mortimer M. Kassell, Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, October 8, 1953).

B. That, the security arrangements accompanying a government loan are an indivisible part of a unitary lending process. The fact that only the trust indenture was taxed does not change the result of this case. Both the loan funds used to purchase the bond and the trust indenture share the same immunity from taxation. Similarly, the fact that primary responsibility for payment of the tax imposed by section 259 is upon the borrower has no effect on the immunity of the trust indenture to the extent it is used as an instrumentality of the United States of America.

C. That, the petition is granted as regards the refund of \$24,750.00. The applicant, Queens College Student Services Corporation, is not entitled to any interest upon such refund and the petition is denied in that respect.

DATED: Albany, New York

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER