

To.....

A copy sent to Richard Funk
on 5/20/75 by Paul Coburn.
Mortgage Tax never sent out.
(An Oversight)

From Edward Rook

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
THE CHURCH CHARITY FOUNDATION OF	:	DETERMINATION
LONG ISLAND	:	
To Review a Determination under Article 11	:	
of the Tax Law with reference to a Mortgage	:	
Recorded February 2, 1973.	:	

Applicant, The Church Charity Foundation of Long Island, 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 a mortgage executed by it and recorded on February 2, 1973, was subject to the mortgage recording tax.

Upon notice to all interested parties, a formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on August 13, 1974, at 11:10 A.M. Applicant appeared by Cullen & Dykman, Esqs. (Richard Funk, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel). The City of New York appeared by Adrian P. Burke, Esq., (Arnold Fox, Esq., and Isaac C. Donner, Esq., of counsel).

ISSUE

Was the mortgage executed by The Church Charity Foundation of Long Island and recorded on February 2, 1973, a mortgage executed by a voluntary nonprofit hospital corporation which was exempt from the mortgage recording tax pursuant to section 253(3) of the Tax Law?

FINDINGS OF FACT

1. On January 30, 1973, applicant, The Church Charity Foundation of Long Island, as mortgagor executed and delivered to Manufacturers Hanover Trust Company a mortgage in the principal sum of \$4,800,000.00 dated January 30, 1973, covering property located in the County of Kings, City of New York, known as St. Johns Episcopal Hospital. The said mortgage was duly recorded in the office of the City Register of the City of New York, Kings County, on February 2, 1973, on Reel 611 at page 1807. At the time of the recording of said mortgage, an affidavit executed by the attorney for the applicant was submitted to the City Register requesting that said mortgage be exempted from the mortgage recording tax pursuant to section 253(3) of the Tax Law upon the ground that applicant operated the mortgaged premises as a voluntary nonprofit hospital. A mortgage recording tax was not collected by the City Register at the time of said recording.

2. On March 26, 1973, the Miscellaneous Tax Bureau directed the City Register of the City of New York to collect a mortgage recording tax in the sum of \$60,000.00 plus penalties in connection with the recording of the mortgage referred to in paragraph 1, upon the grounds that applicant, The Church Charity Foundation of Long Island, was not a voluntary nonprofit hospital and therefore that an exemption under section 253(3) of the Tax Law was improperly granted.

3. Church Charity Foundation was incorporated on February 3, 1852, pursuant to an act of New York State Legislature for the incorporation of benevolent, charitable, scientific and missionary societies. Its name was changed to The Church Charity Foundation of Long Island in 1868. Its charter as now effective (last amended in 1930) provides that its name shall be "The Church Charity Foundation of Long Island". Its territorial limits in which it may exercise its functions consist of the counties of Kings, Queens, Nassau, and Suffolk. Its Board of Managers must consist of nine clergymen of the Protestant Episcopal Church and twelve laymen who shall be communicants of said church and residents of said counties. The Bishop of the Diocese in which the County of Kings is situated is

an ex-officio member of the corporation and president of the board of managers. The objects of the corporation as set forth in section 5 of its charter are:

"to establish and maintain one or more houses for such indigent aged persons and indigent orphan and half-orphan children, and other children left in a destitute and unprotected state and condition, as it may receive and have under its care, and to educate such children, and to establish and maintain one or more hospitals, dispensaries or other institutions, for the shelter, support and relief of such sick or infirm or indigent persons as it may receive under its care, or otherwise minister to and to establish and maintain such other institutions for charitable or reformatory uses and purposes, as may be determined upon by the board of managers."

4. The primary activities of The Church Charity Foundation of Long Island at the time of the recording of the aforesaid mortgage on February 2, 1973, were to operate St. Johns Episcopal Hospital in Brooklyn, New York, St. Johns Hospital in Smithtown, New York and St. Johns Episcopal Home for the Aged and the Blind.

5. St. Johns Episcopal Hospital in Brooklyn, New York, is operated as a voluntary and nonprofit institution. There is no school or church located on its premises. No portion of the premises covered by the mortgage in issue is occupied as an old age home. It has been granted an operating certificate, pursuant

to Article 28 of the Public Health Law, by the State of New York, Department of Health to operate a hospital as a voluntary corporation.

6. On December 24, 1970, the Internal Revenue Service classified applicant, The Church Charity Foundation of Long Island, as an organization that was not a private foundation as defined in section 509(a) of the Internal Revenue Code since it was a hospital as defined in section 170(b)(1)(A)(ii) of the Internal Revenue Code. As such an organization, contributions made to it qualified as charitable deductions under section 170(1) of the Internal Revenue Code.

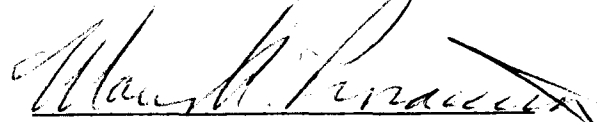
CONCLUSIONS OF LAW

A. That the applicant, The Church Charity Foundation of Long Island, at the time of the recording of the mortgage to Manufacturers Hanover Trust Company on February 2, 1973, was a charitable corporation operating voluntary nonprofit hospitals and health related facilities, and in particular, was operating the mortgaged premises known as St. Johns Episcopal Hospital of Brooklyn, New York, as a voluntary nonprofit hospital, and therefore, it was entitled to an exemption from the mortgage recording tax on the aforesaid mortgage in accordance with the meaning and intent of section 253(3) of the Tax Law.

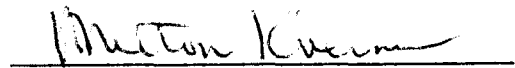
B. That the application of The Church Charity Foundation of Long Island is granted and the mortgage executed by The Church Charity Foundation of Long Island to Manufacturers Hanover Trust Company on January 30, 1973, and recorded on February 2, 1973, is hereby determined to be exempt from the mortgage recording tax imposed by Article 11 of the Tax Law.

DATED: Albany, New York
January 30, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER