

STATE TAX COMMISSION

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, Building #9, State Campus, Albany, New York, on December 13, 1973, at 10:00 A.M. Applicant appeared by Johnson, Reif & Mullan, P.C. (John F. Riley, Esq. of counsel). The Miscellaneous Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq. of counsel). The county of Wayne appeared by Lawrence W. Mooney, Esq.

ISSUE

Was an Indenture of Mortgage and Deed of Trust executed by Gananda Development Corporation to The Chase Manhattan Bank (National Association) Trustee, dated as of December 13, 1972, relating to United States Government guaranteed New Community Debentures subject to the mortgage recording tax?

FINDINGS OF FACT

1. The Urban Growth and New Community Development Act of 1970, Title VII of the Housing and Urban Development Act of 1970, 42 U.S.C.A. §4501 et. seq. was enacted by Congress to encourage the development of new communities by allowing the United States to guarantee payment of corporate debentures issued by approved developers. The Secretary of Housing and Urban Development was delegated the administrative responsibility under the statute. He was given broad powers of control and approval over developers and developments and directed to protect the financial and security interests of the United States.

2. The Secretary of Housing and Urban Development, acting on behalf of the United States, and applicant, Gananda Development Corporation, entered into a project agreement dated as of December 13, 1972, wherein the United States agreed with the applicant, subject

to the conditions stated therein, to guarantee \$22,000,000.00, principal amount of New Community Debentures, to be issued by the applicant for land acquisition and development costs in connection with the creation of a new community called Gananda, located in Wayne County on 5,842 acres of land approximately 13 miles east of downtown Rochester, New York.

3. Simultaneously with the execution of the aforesaid project agreement, applicant, Gananda Development Corporation, as mortgagor and The Chase Manhattan Bank (National Association), Trustee, as mortgagee, executed an Indenture of Mortgage and Deed of Trust relating to \$22,000,000.00 of United States Government guaranteed 7.15% New Community Debentures due December 15, 1992, issued by applicant.

4. The aforesaid Indenture of Mortgage and Deed of Trust provided at page 2 thereof:

"That the Company, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Debentures by the holders thereof and of the sum of one dollar lawful money of the United States to it duly paid by the Trustee, the receipt whereof is hereby acknowledged, in order to secure the United States against any liability under any Guarantee and against any failure by the Company to keep, perform and observe all terms, conditions, provisions, covenants and agreements of this Indenture, by these presents does hereby give, grant, bargain, sell, release, convey, alien, assign, confirm, transfer, mortgage, warrant,

pledge and set over unto The Chase Manhattan Bank (National Association), as Trustee, and unto its successors in the trusts created hereby and to them and their assigns forever, all the right, title and interest of the Company in and to the following:

GRANTING CLAUSE FIRST

All the real property situated in Wayne County, New York, described in Schedule A hereto" (Italics supplied)

5. On December 21, 1972, the Indenture of Mortgage and Deed of Trust dated as of December 13, 1972, made by applicant, Gananda Development Corporation as mortgagor, to The Chase Manhattan Bank (National Association), Trustee, as mortgagee, in the sum of \$22,000,000.00 was presented for recording to the county clerk of Wayne County who was requested by the applicant to mark and treat said mortgage as exempt from the mortgage recording tax.

6. The county clerk of Wayne County refused to accept the aforesaid mortgage for recording unless a mortgage recording tax on the face amount of the mortgage, \$22,000,000.00, was paid at the rate of \$.75 per hundred, which tax amounted to \$165,000.00.

7. In compliance with the ruling of the county clerk of Wayne County and under protest applicant, Gananda Development Corporation, tendered a check in the amount of \$165,000.00 as payment of the mortgage recording tax on the indebtedness of \$22,000,000.00.

The county clerk of Wayne County accepted the said check and noted on the Indenture of Mortgage and Deed of Trust that the tax was paid under protest.

8. Upon payment of \$165,000.00 demanded by the county clerk of Wayne County, the mortgage was recorded in the office of said county clerk in liber 389 of mortgages at page 769 on December 21, 1972.

9. On September 22, 1973, applicant, Gananda Development Corporation, filed a claim for refund of the sum of \$165,000.00 and demanded a hearing.

CONCLUSIONS OF LAW

A. That a mortgage to which the United States is a party is not subject to the mortgage recording tax, since there is an implied immunity from any form of taxation by state and local governments, unless the enabling Federal statute permits such taxation. There are no provisions in the Urban Growth and New Community Development Act of 1970, Title VII, of the Housing and Development Act of 1970, 42 U.S.C.A. §4501 et. seq. waiving the immunity of the United States from the imposition of a mortgage recording tax.

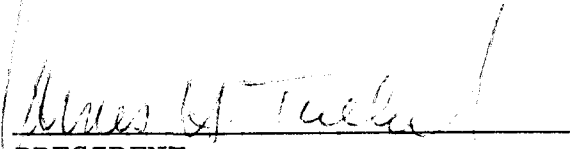
B. That the Indenture of Mortgage and Deed of Trust dated as of December 13, 1972, from applicant, Gananda Development Corporation, as mortgagor, to The Chase Manhattan Bank (National Association), Trustee, as mortgagee constituted a mortgage solely for the benefit of the United States on real property owned by applicant in Wayne County, New York.

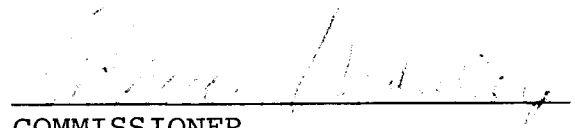
C. That The Chase Manhattan Bank (National Association) in its capacity as trustee under the aforesaid instrument was acting as an agent or instrumentality of the United States in connection with the recording thereof and is, therefore, entitled to the same immunity from the imposition of the mortgage recording tax that the United States was entitled to.

D. That the application of Gananda Development Corporation is granted.

DATED: Albany, New York
July 11, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

Mortgage Sat

August 21, 1975

Johnson, Reif and Mullan, P.C.
47 South Fitzhugh Street
Rochester, New York 14614

Attention: John F. Riley, Esq.

Re: Gananda Development Corp.
Mortgage Tax Determination

Gentlemen:

On July 11, 1975, the State Tax Commission issued a determination in the above matter granting the application of Gananda. Pursuant to section 263, the determination was forwarded to the comptroller for audit. By letter of August 15, 1975, the Tax Commission was informed by the Department of Audit and Control that its approval would be withheld.

Both a copy of the determination and the said letter are enclosed.

The State Tax Commission is meeting at 10:30 Wednesday, August 27 in the office of Commissioner Tully, in Albany, Building 9, State Campus, and will entertain argument on this matter at that time or as soon as counsel may be heard.

Sincerely,

EDWARD ROOK
SECRETARY TO THE
STATE TAX COMMISSION

Enclosures

August 21, 1975

Lawrence M. Mooney, Esq.
Wayne County Attorney
201 East Main Street
Palmyra, New York 14522

Re: Gananda Development Corp.
Mortgage Tax Determination

Dear Mr. Mooney:

On July 11, 1975, the State Tax Commission issued a determination in the above matter granting the application of Gananda. Pursuant to section 263, the determination was forwarded to the comptroller for audit. By letter of August 15, 1975, the Tax Commission was informed by the Department of Audit and Control that its approval would be withheld.

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Sincerely,

EDWARD ROOK
SECRETARY TO THE
STATE TAX COMMISSION

Enclosures

August 21, 1975

Mr. Thomas G. Amyot
Chief State Accounts Director
Department of Audit and Control
State Office Building
Albany, New York 12236

Re: Gananda Development Corp.
Mortgage Tax Determination

Dear Mr. Amyot:

On July 11, 1975, the State Tax Commission issued a determination in the above matter granting the application of Gananda. Pursuant to section 263, the determination was forwarded to the comptroller for audit. By letter of August 15, 1975, the Tax Commission was informed by the Department of Audit and Control that its approval would be withheld.

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Sincerely,

Enclosures

EDWARD ROOK
SECRETARY TO THE
STATE TAX COMMISSION

August 21, 1975

Gananda Development Corporation
287 Wiedrich Road
Walworth, New York 14568

Attention: James O'Brien, Esq.

Re: Gananda Development Corp.
Mortgage Tax Determination

Gentlemen:

On July 11, 1975, the State Tax Commission issued a determination in the above matter granting the application of Gananda. Pursuant to section 263, the determination was forwarded to the comptroller for audit. By letter of August 15, 1975, the Tax Commission was informed by the Department of Audit and Control that its approval would be withheld.

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