

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Church Charity Foundation of Long Island : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Mortgage :
Recording Tax under Article 11 of the Tax Law for :
the Recorded On 8/8/78. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 25th day of September, 1981, he served the within notice of Decision by certified mail upon Church Charity Foundation of Long Island, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Church Charity Foundation of Long Island
480 Herkimer St.
Brooklyn, NY 11213

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
25th day of September, 1981.

Annice A. Fitzgerald

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 25th day of September, 1981, he served the within notice of Decision by certified mail upon Richard H. Funk the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard H. Funk
Cullen & Dykman, Esqs.
177 Montague St.
Brooklyn, NY 11201

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
25th day of September, 1981.


Carrie A. Haglund



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

September 25, 1981

Church Charity Foundation of Long Island
480 Herkimer St.
Brooklyn, NY 11213

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 251 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard H. Funk
Cullen & Dykman, Esqs.
177 Montague St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CHURCH CHARITY FOUNDATION OF LONG ISLAND	:	DECISION
for the Refund of Mortgage Recording Tax under :		
Article 11 of the Tax Law with Reference to a		
Mortgage Recorded on August 8, 1978.	:	

Petitioner, Church Charity Foundation of Long Island, 480 Herkimer Street, Brooklyn, New York 11213, filed a petition for the refund of mortgage recording tax under Article 11 of the Tax Law with reference to a mortgage recorded on August 8, 1978 (File No. 24470).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Center, New York, New York, on October 1, 1980 at 9:15 A.M. Petitioner appeared by Cullen & Dykman, Esqs., (Richard H. Funk, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq., (William Fox, Esq., of counsel)

ISSUE

Whether the mortgage executed by petitioner and recorded on August 8, 1978 was subject to the New York State Mortgage Recording Tax.

FINDINGS OF FACT

1. The petitioner herein was chartered on February 3, 1852, as Church Charity Foundation, pursuant to an act of the 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 Certificate of Incorporation, as restated on November 14, 1975, under section 805 of the Not-for-Profit Corporation Law, provides that

petitioner's name shall be "The Church Charity Foundation of Long Island". The territorial limits in which it may exercise its functions consist of the Counties of Kings, Queens, Nassau and Suffolk. Its Board of Managers consists of nine (9) clergymen of the Protestant Episcopal Church and twelve (12) laymen who are 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 Article 11 of its Restated Certificate 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."

2. Among the primary activities of the petitioner are the operation of St. John's Episcopal Hospital in Brooklyn, New York; St. John's Smithtown Hospital; St. John's Episcopal Home for the Aged and the Blind and Smithtown Housing for the Elderly. The petitioner also operates out-patient ambulatory care clinics and methadone treatment centers.

3. The petitioner, as mortgagor, executed a construction mortgage dated June 20, 1978 to Citibank, N.A., as mortgagee, securing the sum of seven million eight hundred thousand dollars and covering property situated in the County of Suffolk, Town of Smithtown. The project that was covered by the mortgage was the Village of St. John's, a housing development for the elderly. The site in Smithtown is known as the St. John's Campus; petitioner's hospital is also located there.

4. On August 8, 1978, the aforesaid mortgage was recorded in Suffolk County, Liber 8233 of mortgages, page 345. The recording officer demanded a filing fee of \$58,500.00, which sum the petitioner paid "under protest".

5. On December 24, 1970, the Internal Revenue Service classified the petitioner as a charitable organization 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(i) of the Internal Revenue Code.

6. Petitioner, in substantiation of its petition herein, cites a prior determination issued by the State Tax Commission dated January 30, 1975. That determination was also with regard to a mortgage tax liability arising out of the principal facts as follows:

(a) On January 30, 1973, petitioner herein, 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 petitioner 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 petitioner 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.

(b) On March 26, 1973, the New York State 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 petitioner was not a voluntary nonprofit hospital and therefore that an exemption under section 253(3) of the Tax Law was improperly granted.

7. Conclusion of Law "A" of the aforementioned prior determination states as follows:

"A. That the...[petitioner], 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."

8. Petitioner's purpose of existence and its primary activities at the time of recording the mortgage in issue herein were substantially the same as those in existence during the period encompassed in the determination referred to in Finding of Fact "6", herein.

CONCLUSIONS OF LAW

A. That section 253(3) of the Tax Law provides in part as follows:

" 253. Recording Tax

* * * *

3. Notwithstanding any other provision of law to the contrary, the mortgage recording tax shall not be imposed upon any mortgage executed by a voluntary non-profit hospital corporation..."

This provision was added by the Laws of New York, 1972, Chapter 732, Section 1. The Memorandum of Assemblyman Perry B. Duryea, Jr., as regards Conclusion of Law "B" provides as follows:

"Tax Law, §253. This bill would add a new subdivision to Section two hundred fifty-three of the tax law to prevent the levying of a mortgage recording tax on any mortgage executed and recorded by a voluntary non-profit hospital corporation.

A mortgage recording tax is a state-imposed tax. Its revenue is eventually distributed to the villages and towns within a county. The tax revenue which is obtained from non-profit voluntary hospitals provides few benefits to a community when it is finally allocated.

On the other hand, if this money could be retained by the hospitals, it could more directly benefit many members of the community who use the medical facilities.

In addition, the mortgage recording tax detracts from the intentions of those benefactors who make donations for improved facilities and equipment in these non-profit voluntary hospitals. As a consequence, the tax discourages these individuals.

This bill, thus, would provide some measure of fiscal relief to the voluntary non-profit hospitals in order for them to improve care for the sick and injured in their communities."

This memorandum shows that it was the intention of the legislature that the above quoted portion of section 253(3) of the Tax Law was to be applicable to non-profit voluntary hospitals only.

B. That petitioner is a multipurpose charity and is not merely a non-profit voluntary hospital. The mortgage which was the subject of the 1975 decision of the State Tax Commission involved petitioner's function as a hospital. The mortgage at issue here, however, pertains to a housing development for the elderly and involved another of petitioner's functions. The language of the exemption taken literally would exempt from tax any mortgage executed by a voluntary non-profit hospital corporation. It is noted, however, that petitioner is much more than a voluntary non-profit hospital corporation and its purposes extended far beyond those of such corporations. The exemption approved in the 1975 decision recognized petitioner's hybrid nature and followed legislative intent in allowing the exemption, although petitioner actually was something more than a voluntary non-profit hospital corporation. It would clearly be beyond the intention of the legislature to

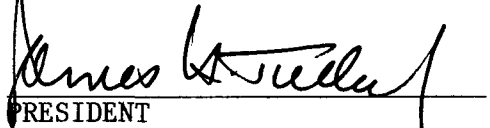
allow an exemption for the mortgage pertaining to a housing development for the elderly, even though such activity was within the scope of petitioner's charter.

C. That the mortgage executed by petitioner to Citibank, N.A., on June 20, 1978 and recorded in the County of Suffolk, Liber 8233 of mortgages, page 345 on August 8, 1978 is not exempt from the mortgage recording tax imposed by Article 11 of the Tax Law. Accordingly, the petition herein is denied.

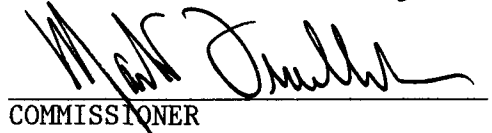
DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER