

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Barry M. & Rebecca Fuller Gray :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Mortgage Recording :
Tax under Article 11 of the Tax Law for a Mortgage :
Recorded on December 7, 1983. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

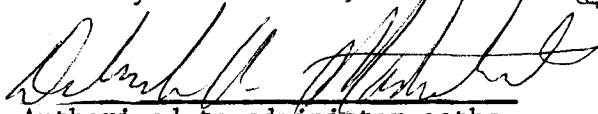
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Barry M. & Rebecca Fuller Gray, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barry M. & Rebecca Fuller Gray
54 Wakefield Court
Delmar, NY 12054

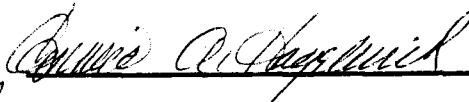
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
13th day of December, 1985.



Authorized to administer oaths
pursuant to Tax Law section 174



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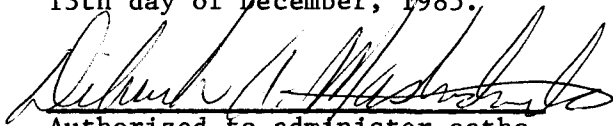
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Robert L. Adams, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert L. Adams
41 Second Street
Troy, NY 12180

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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.

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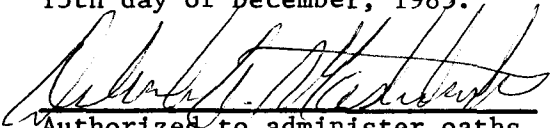
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Edward V. Regan, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Edward V. Regan
Office of the State Comptroller
Alfred E. Smith Building
Albany, NY 12236

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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.

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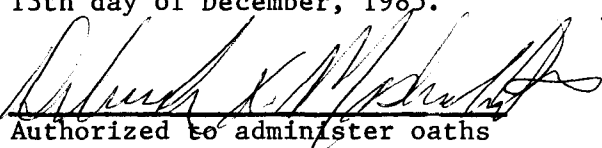
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Robert Mensing, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Robert Mensing
Mortgage & Real Estate Transfer Tax Unit
Building #9 - Room 403
State Campus
Albany, NY 12227

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
13th day of December, 1985.


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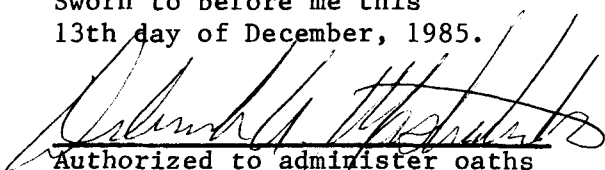
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Cathy B. Connors, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Cathy B. Connors
Director of Finance
Albany County Department of Finance
112 State Street, Room 800
Albany, NY 12207

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
13th day of December, 1985.


Authorized to administer oaths
pursuant to Tax Law section 174



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

December 13, 1985

Barry M. & Rebecca Fuller Gray
54 Wakefield Court
Delmar, NY 12054

Dear Mr. & Mrs. Gray:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Robert L. Adams
41 Second Street
Troy, NY 12180

AND

Edward V. Regan
Office of the State Comptroller
Alfred E. Smith Building
Albany, NY 12236

AND

Taxing Bureau's Representative

AND

Robert Mensing
Mortgage & Real Estate Transfer Tax Unit
Building #9 - Room 403
State Campus
Albany, NY 12227

AND

Cathy B. Connors
Director of Finance
Albany County Department of Finance
112 State Street, Room 800
Albany, NY 12207

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BARRY M. GRAY AND REBECCA FULLER GRAY	:	DECISION
	:	
to Review a Determination under Article 11	:	
of the Tax Law with Reference to a Mortgage	:	
Recorded on December 7, 1983.	:	

Petitioners, Barry M. Gray and Rebecca Fuller Gray, 54 Wakefield Court, Delmar, New York 12054, filed a petition to review a determination under Article 11 of the Tax Law with reference to a mortgage recorded on December 7, 1983 (File No. 51888).

A formal hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on May 23, 1985 at 10:45 A.M. Petitioners appeared by Robert L. Adams, Esq. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel). A Notice of Hearing was also issued to the Albany County Department of Finance, but no one appeared on behalf thereof.

ISSUE

Whether a mortgage which is subject to the approval of the State of New York Mortgage Agency and which is subsequently assigned thereto is exempt from the mortgage recording tax imposed pursuant to Article 11 of the Tax Law.

FINDINGS OF FACT

1. On December 7, 1983, Barry M. Gray and Rebecca Fuller Gray (hereinafter "petitioners") purchased real property located at No. 54 Wakefield Court in the Town of Bethlehem, County of Albany and State of New York. Concurrently with the purchase of said property, petitioners executed a mortgage to the Home and

City Savings Bank to secure a purchase money loan in the sum of \$61,000.00. Although said loan had been obtained through the Home and City Savings Bank, the original application for the loan was subject to the approval of the State of New York Mortgage Agency (hereinafter "SONYMA") and it was intended, by all parties thereto, that the note and mortgage would be assigned by Home and City Savings Bank to SONYMA after the recordation of the mortgage.

2. Simultaneously with the recordation of the deed to said property, on December 7, 1983, the mortgage executed by petitioners to Home and City Savings Bank was recorded in the Office of the Albany County Clerk, at which time petitioners were required to pay mortgage recording tax in the amount of \$432.50. On the same date, Home and City Savings Bank assigned the said mortgage to SONYMA and an Assignment of Mortgage was filed in the Office of the Albany County Clerk.

3. Petitioners have requested a refund of \$432.50, the full amount of mortgage recording tax imposed and paid by them upon the recordation of the mortgage executed to Home and City Savings Bank and subsequently assigned to SONYMA. Petitioners contend that the said mortgage was exempt from the imposition of mortgage recording tax pursuant to the provisions of sections 2412, 2421 and 2422 of the Public Authorities Law. The Audit Division of the Department of Taxation and Finance agrees with petitioners that, under the facts of this case, mortgage recording tax should not have been imposed and, therefore, that petitioners are entitled to a refund thereof. The Albany County Department of Finance refused to waive notice of hearing, but failed to appear at the hearing held herein. It is apparently the position of the Albany County Department of Finance that the controlling statute in this case is section 252 of the Tax Law which provides that, with certain specific exceptions not applicable herein, no

mortgage of real property situated within the State shall be exempt from the mortgage recording tax imposed by Article 11 of the Tax Law and that petitioners are not, therefore, entitled to a refund of mortgage recording tax paid.

4. Pursuant to the expanded authorization given to SONYMA to contract to acquire and to acquire forward commitment mortgages, the local lending institution originates mortgage loans in consideration for SONYMA's promise to purchase such loans. The term "forward commitment mortgage" is defined in section 2402(12) of the Public Authorities Law to mean a mortgage for which a commitment to advance funds is made not earlier than the date the agency issues an invitation to purchase mortgages or such later date as specified in the invitation. The mortgage given to the local lending institution is then promptly assigned, after recordation, to SONYMA. The mortgage loans made by the local lending institution would not be made without SONYMA's promise, in advance, to promptly purchase such loan since, as a condition to purchase under this program, the local lending institution must certify that the mortgage loan is in addition to mortgages such institution would otherwise have made. (Public Authorities Law §2405-b(4)). The local lending institution is, in effect, originating the mortgage loan on behalf of SONYMA. Furthermore, as a condition precedent to the purchase of a forward commitment mortgage, the originating lending institution warrants that such mortgage shall have been properly recorded. (Public Authorities Law §2405-b(8)(e)).

CONCLUSIONS OF LAW

A. That the purpose of SONYMA was set forth in section 2405(1) of the Public Authorities Law, prior to its amendment by Chapter 915 of the Laws of 1982, which provided:

"(1) The purpose of the agency shall be to purchase mortgages from banks within the state during periods when there is an inadequate supply of credit available for new residential mortgage loans and to require such banks to invest an amount equal to the proceeds thereof as rapidly as possible in new mortgages on residential real property for family units within the state."

B. That Chapter 915 of the Laws of 1982 expanded the operations of SONYMA by providing, in part, that the agency shall have the power:

"(t)o...acquire, and contract to acquire, forward commitment mortgages made by banks and to enter into advance commitments to banks for the purchase of said mortgages..." (Public Authorities Law §2404(7)(b)).

C. That with respect to exemption from State taxation of the activities of SONYMA, section 2412 of the Public Authorities Law, in effect for the year at issue, provided as follows:

"§ 2412. Property and income

The property of the agency and its income and operations shall be exempt from taxation or assessments of every kind and nature, other than assessments for local improvements; nor shall the agency be required to pay any recording fee or transfer tax of any kind on account of instruments recorded by it or on its behalf."

D. That sections 2421 and 2422 of the Public Authorities Law provide as follows:

"§ 2421. Inconsistent provisions of other laws superseded

Insofar as the provisions of this title are inconsistent with the provisions of any other law, general, special or local, the provisions of this title shall be controlling. It is the intent of the legislature that the provisions of this title relating to mortgage commitments and laws be construed liberally so as to effectuate the public and governmental purposes thereof."

"§ 2422. Construction

This title, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes."

Article 11 of the Tax Law imposes taxes on the recording of mortgages of real property measured by the principal debt or obligation secured by such mortgage. Section 252 of such article, applicable to exemptions from the mortgage recording tax, provides, with certain exceptions not relevant herein, that:

"[n]o mortgage of real property situated within this state shall be exempt., and no person or corporation owning any debt or obligation secured by mortgage of real property situated within this state shall be exempt, from the taxes imposed by this article by reason of anything contained in any other statute...".

No specific provision is made in such section for the operations of SONYMA. An apparent inconsistency thus exists between the Tax Law and the statute which created SONYMA.

E. That section 252 of the Tax Law was enacted in 1909 and was last amended in 1966. Title 17 of Article 8 of the Public Authorities Law which created SONYMA was enacted in 1970.

"The rule is well settled that where two statutes cannot otherwise be reconciled, the prior general statute yields to the later specific or special statute." Williamsburgh Power Plant Corp. v. City of New York, 255 App. Div. 214, 218, aff'd 280 N.Y. 551.

The provisions of the Public Authorities Law which exempt SONYMA from the payment of any recording fee or transfer tax of any kind on account of instruments recorded by it or on its behalf are, therefore, controlling.

F. That even though SONYMA was not a party to the original mortgage and did not record the same, the recording of the mortgage was done on behalf of SONYMA. Home and City Savings Bank originated the mortgage loan on behalf of SONYMA and, as a condition precedent to the purchase of the forward commitment mortgage by SONYMA, was required to warrant that the mortgage had been properly recorded with the appropriate public official (Public Authorities Law §2405-b(8)(e)).

G. That the mortgage executed by petitioners to Home and City Savings Bank and assigned by Home and City Savings Bank to SONYMA is exempt from the mortgage recording tax imposed pursuant to Article 11 of the Tax Law.

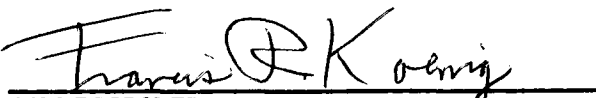
H. That the petition of Barry M. Gray and Rebecca Fuller Gray is granted and the sum of \$432.50 is to be refunded, together with such interest as may be lawfully owing.

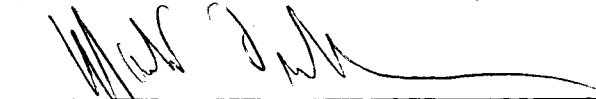
DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985


PRESIDENT


COMMISSIONER


COMMISSIONER