

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Hamilton Plaza Associates	:	
for Redetermination of Mortgage Recording Tax	:	AFFIDAVIT OF MAILING
under Article 11 of the Tax Law with Reference to	:	
a Mortgage Recorded on December 3, 1982.	:	

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 25th day of May, 1984, he served the within notice of Decision by certified mail upon Hamilton Plaza Associates, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hamilton Plaza Associates  
c/o Horevitz, Toback & Hyman  
The Grace Bldg., 1114 Avenue of the Americas  
New York, NY 10036

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  
25th day of May, 1984.



Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Hamilton Plaza Associates	:	
		AFFIDAVIT OF MAILING
for Redetermination of Mortgage Recoring Tax	:	
under Article 11 of the Tax Law with Reference to	:	
a Mortgage Recorded on December 3, 1982.	:	

State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 25th day of May, 1984, he served the within notice of Decision by certified mail upon Marvin J. Hyman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marvin J. Hyman  
Horevitz, Toback & Hyman  
The Grace Bldg., 1114 Avenue of the Americas  
New York, NY 10036

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  
25th day of May, 1984.

David Paruch

Authorized to administer oaths  
pursuant to Tax Law section 174





## STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Hamilton Plaza Associates	:	
		AFFIDAVIT OF MAILING
for Redetermination of Mortgage Recoring Tax	:	
under Article 11 of the Tax Law with Reference to	:	
a Mortgage Recorded on December 3, 1982.	:	

State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 25th day of May, 1984, he served the within notice of Decision by certified mail upon Arthur Maxwell, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur Maxwell  
Mortgage & Real Estate Transfer Tax Unit  
Room 403, Building No. 9  
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  
25th day of May, 1984.

David Parchurch

Authorized to administer oaths  
pursuant to Tax Law section 174

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

May 25, 1984

Hamilton Plaza Associates  
c/o Horevitz, Toback & Hyman  
The Grace Bldg., 1114 Avenue of the Americas  
New York, NY 10036

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, 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

Marvin J. Hyman  
Horevitz, Toback & Hyman  
The Grace Bldg., 1114 Avenue of the Americas  
New York, NY 10036

AND

Arthur Maxwell  
Mortgage & Real Estate Transfer Tax Unit  
Room 403, Building No. 9  
State Campus  
Albany, NY 12227

Taxing Bureau's Representative

Philip R. Michael  
Commissioner of Finance  
City of New York  
Municipal Building  
New York, NY 10007

AND

W. Bernard Richland  
Corporation Counsel  
City of New York  
Municipal Building  
New York, NY 10007

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
HAMILTON PLAZA ASSOCIATES	:	DECISION
	:	
for Redetermination of Mortgage Recording Tax	:	
under Article 11 of the Tax Law with Reference	:	
to a Mortgage Recorded on December 3, 1982.	:	

---

Petitioner, Hamilton Plaza Associates, 25 Twelfth Street, Brooklyn, New York, filed a petition for redetermination of mortgage recording tax under Article 11 of the Tax Law with reference to a mortgage recorded on December 3, 1982 (File No. 42729).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 8, 1983 at 2:00 P.M. Petitioner appeared by Horwitz, Toback & Hyman (Marvin J. Hyman, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel). The City of New York appeared by Frederick A. O. Schwarz, Esq. (Arnold Fox, Esq., of counsel).

ISSUE

Whether mortgage tax is due on a mortgage where the City of New York is the mortgagee.

FINDINGS OF FACT

1. Petitioner, Hamilton Plaza Associates, is a limited partnership organized under the laws of New York State. On December 2, 1981, petitioner acquired title to the premises known as Hamilton Plaza in Brooklyn, New York.

2. Pursuant to the terms of an Urban Development Action Grant ("UDAG") which was preliminarily approved on July 12, 1979, the City of New York ("the

City") agreed to loan to petitioner the sum of \$1,200,000.00 to be secured by a second mortgage covering the Hamilton Plaza property. The closing on the property occurred on November 18, 1982, at which time petitioner executed and delivered a second mortgage to the City in return for the UDAG funds.

3. During the loan negotiations prior to the closing, petitioner had relied on a longstanding custom and policy of the City which was to issue a letter at closing indicating exemption from the mortgage recording tax where the City was the mortgagee. Such letter was to be exhibited to the County Register upon recordation in order to obtain the exemption.

4. At the Hamilton Plaza closing, the City's representative stated that petitioner would be required to pay a mortgage recording tax of \$27,000.00 for recording the mortgage. Petitioner had not been forewarned that there had been any change in the City's policy of issuing an exemption letter and objected to payment of the tax. The City's representative insisted that the tax be paid in order for the funds to be loaned to petitioner. Petitioner paid the tax of \$27,000.00 under protest and delivered a letter of protest to the City dated November 18, 1982. The mortgage was recorded in the office of the Register of the County of Kings on December 3, 1982.

5. In section 1.11 of the mortgage document, petitioner agreed to "pay all such registration, recording, filing or other taxes, fees and charges, and [to] comply with all such statutes and regulations, as may be required by law...". It is the City's position that the aforesaid section indicates that it was the responsibility of petitioner as mortgagor to record the mortgage and pay the appropriate recording taxes and that the section establishes petitioner's liability. Petitioner, on the other hand, maintains that it was only required to pay those fees that were "required by law" and that the law, as expounded by



the courts, was that a mortgage where the City was a mortgagee was exempt from mortgage recording tax. The Department of Taxation and Finance agrees with petitioner that, under the facts of this case, the mortgage was exempt from the tax.

#### CONCLUSIONS OF LAW

A. That "[t]he property held by the state, or by any of its municipal divisions, for public purposes, is not, and never has been, subject to taxation. The right to impose taxes is a part of the sovereign power which for obvious reasons has never been extended to property which the government itself holds for public use, or which is so held by a municipality" (Matter of Hamilton, 148 N.Y. 310, 313-314).

B. That the City of New York, as a municipal division of New York State is immune from taxation. In a case involving a mortgage held by the New York State Employee's Retirement System, an agency of the State of New York, the Appellate Division, Third Department held that "(t)his immunity is enjoyed independent of the exemptions from taxation set forth in section 252 of the Tax Law (citations omitted). The funds of the retirement system are its property and are maintained and invested for a public use (citation omitted). The mortgage is similarly property of the immune agency and thus exempt from taxation" (City of New York v. Tully, 88 A.D.2d 701 mot. for lv. to app. den. 57 N.Y.2d 606; see Hotel Waldorf Astoria Corp. v. State Tax Commission, 86 A.D.2d 330 mot. for lv. to app. den. 58 N.Y.2d 603). Although petitioner was responsible, under the terms of the mortgage, for payment of any recording fees and taxes "required by law", the mortgage was exempt as the property of the City and thus no mortgage recording tax was "required by law."

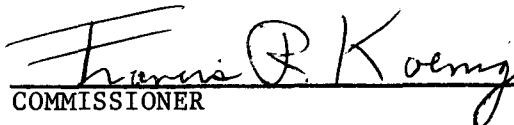
C. That the petition of Hamilton Plaza Associates is granted and the sum of \$27,000.00 is to be refunded, together with such interest as may be lawfully owing.

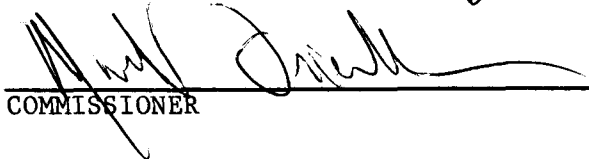
DATED: Albany, New York

STATE TAX COMMISSION

MAY 25 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER