

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Intrepid Museum Foundation, Inc. : AFFIDAVIT OF MAILING
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 1/18/82. :

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 20th day of January, 1984, he served the within notice of Decision by certified mail upon Intrepid Museum Foundation, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Intrepid Museum Foundation, Inc.
299 Park Ave.
New York, NY 10017

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
20th day of January, 1984.

David Parchuck

Samuel R. Day
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

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of :
Intrepid Museum Foundation, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
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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 20th day of January, 1984, he served the within notice of Decision by certified mail upon Joseph G. Goward, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

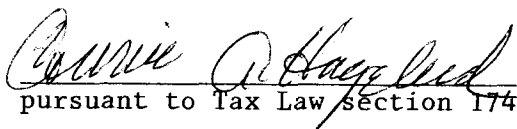
Joseph G. Goward
Stein, Davidoff, Malito, Katz & Hutcher
100 East 42nd St.
New York, NY 10017

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
20th day of January, 1984.





Authorized to administer oaths

pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Intrepid Museum Foundation, Inc. : AFFIDAVIT OF MAILING
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 1/18/82. :

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 20th day of January, 1984, he served the within notice of Decision by certified mail upon Allan G. Schwartz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Allan G. Schwartz, Esq.
Corporation Counsel for the City of NY
Municipal Bldg.
100 Church St.
New York, NY 10017

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
20th day of January, 1984.


pursuant to Tax Law section 174


Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Intrepid Museum Foundation, Inc. : AFFIDAVIT OF MAILING

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 1/18/82. :

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 20th day of January, 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 & Land Tax Tech. III
Room 403, Bldg. 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
20th day of January, 1984.

David Parchuck

Constance A. Chaplin
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 20, 1984

Intrepid Museum Foundation, Inc.
299 Park Ave.
New York, NY 10017

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 Representatives:

Joseph G. Goward
Stein, Davidoff, Malito, Katz & Hutcher
100 East 42nd St.
New York, NY 10017

Taxing Bureau's Representative

AND

Allan G. Schwartz, Esq.
Corporation Counsel for the City of New York
Municipal Bldg.
100 Church St.
New York, NY 10017

Arthur Maxwell
Mortgage & Land Tax Tech. III
Room 403, Building 9
State Campus
Albany, NY 12227

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
INTREPID MUSEUM FOUNDATION, INC.	:	DECISION
to Review a Determination under Article 11 of	:	
the Tax Law with Reference to an Indenture of	:	
Mortgage and Deed of Trust Recorded on	:	
January 18, 1982.	:	

Petitioner, Intrepid Museum Foundation, Inc., 299 Park Avenue, New York, New York 10017, filed a petition to review a determination under Article 11 of the Tax Law with reference to an Indenture of Mortgage and Deed of Trust recorded on January 18, 1982 (File No. 37029).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 21, 1983 at 11:15 A.M. with all briefs due by July 15, 1983. Petitioner appeared by Stein, Davidoff, Malito, Katz & Hutcher, Esqs. (Joseph G. Goward, Esq. and Peter R. Caronia, 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 F. A. O. Schwarz, Esq. (Arnold Fox, Esq., of counsel).

ISSUES

I. Whether the Intrepid Museum Foundation, Inc. is an instrumentality of the City of New York and as such is not liable for mortgage recording taxes.

II. Whether, in the alternative, petitioner, as a not-for-profit corporation, is not liable for the special additional mortgage recording tax under Tax Law §253.1-a(a) even though it has assumed liability for such tax.

FINDINGS OF FACT

1. On January 18, 1982, a trust indenture executed by petitioner, Intrepid Museum Foundation, Inc. (hereinafter "Intrepid Museum"), was recorded by the City Register of New York County, and petitioner paid \$177,500.00 in mortgage tax on a mortgage indebtedness of \$14,200,000.00. At recording, petitioner was granted an exemption from the special additional tax on mortgages imposed under Tax Law §253.1-a(a) on the basis that it was a not-for-profit corporation.

2. The Audit Division, in a letter dated February 8, 1982 to the City Register of New York County, directed that the City Register "proceed at once to collect the (special additional) tax and apply the provisions of Section 258 of the Tax Law to the mortgage until payment is received." The Audit Division further noted that where the mortgagor is an exempt organization, the special additional tax under Tax Law §253.1-a is required to be paid by the mortgagee, who, in this case, was Marine Midland Bank, N.A.

3. On March 16, 1983, petitioner paid the special additional mortgage tax in the amount of \$35,500.00, plus penalty and interest of \$2,485.00.¹ At the same time, it paid mortgage tax in the amount of \$22,500.00 on \$1,000,000.00, which was an additional loan advance to petitioner over and above the \$14,200,000.00 noted in Finding of Fact "1", supra.

4. Petitioner was formed as a New York not-for-profit education corporation on April 24, 1981. It is exempt from federal income taxation under I.R.C. §501. It has a board of trustees which elects officers whose duties are described in detailed by-laws. Petitioner acquired from the U.S. Navy the

¹ Section 6.04 of the trust indenture, which is attached to the petition herein, required petitioner to record the trust indenture at its own cost and expense. As a result, petitioner assumed the liability of the Marine Midland Bank, N.A. to pay the special additional mortgage tax.

World War II aircraft carrier, U.S.S. Intrepid, and is converting and reconditioning the carrier into an air, space and naval museum. The carrier is docked at Pier 86 on the Hudson River at West 46th Street, New York City and will be used as a naval and aerospace museum for the display of military and commercial aircraft and will have theater facilities and audio-visual displays, as well as naval displays relating to aircraft and aerospace matters.

5. The cost for the conversion and reconditioning of the Intrepid has been estimated to be \$22,850,000.00. The primary source of petitioner's funds is from the issuance of gross revenue bonds in the amount of \$15,200,000.00. These bonds, held by the general public, are secured by the trust indenture noted in Finding of Fact "1", supra. The petitioner also obtained an Urban Development Action Grant loan through New York City of \$4,500,000.00, and New York City has contributed \$2,600,000.00 for related improvements.

6. The U.S.S. Intrepid is the fourth United States ship to bear this name. The ship, launched on December 3, 1943, cost \$44,000,000 to build and carried 360 officers and 3,008 men. During World War II, the Intrepid's air wing destroyed 650 enemy planes on the ground and in the air and some 289 enemy ships were sunk or damaged by Intrepid's aircraft. The Intrepid opened up the largest battle in naval history at Leyte Gulf where her air group helped to sink the Japanese super-battleship Musashi. Six months later, her aircraft repeated the feat by sinking the super-battleship Yamato. During the war, the Intrepid sustained severe structural damage and suffered from massive fire. More than one hundred of her men were lost in torpedo and Kamikaze attacks on the ship itself, while over one hundred of her airmen were killed in action over enemy targets.

7. Petitioner and the City of New York entered into a detailed lease and security agreement consisting of sixty-five pages plus attachments enabling petitioner to dock the carrier at Pier 86 for a term commencing on January 1, 1982 and expiring on December 31, 2014. Such agreement describes the parties as follows:

"Lease and Security agreement made as of the 1st day of January, 1982, between the City of New York, acting by the Commissioner of Ports and Terminals ("Landlord"), a municipal corporation of the State of New York having an office at The Battery Maritime Building, Foot of Whitehall Street, New York, New York 10004 and Intrepid Museum Foundation ("Tenant"), a not-for-profit corporation organized and existing under the laws of the State of New York, having an office at 299 Park Avenue, New York, New York 10017."

CONCLUSIONS OF LAW

A. That pursuant to Tax Law §259, mortgages made by a corporation in trust to secure payment of bonds are subject to tax based upon the amount of indebtedness advanced or accrued.

B. That petitioner, as a not-for-profit education corporation, is a separate and distinct entity with an independent board of trustees and detailed by-laws. Its corporate existence may not be disregarded on the basis that it is "so organized and controlled and its affairs so conducted as to make it only an adjunct and instrumentality (emphasis added)..." of the City of New York. Black's Law Dictionary 942 (rev. 4th ed. 1968). Furthermore, the detailed lease agreement between petitioner and the City of New York supports the conclusion that petitioner is not a mere instrumentality of the City. Therefore, petitioner is not exempt from the mortgage recording tax on the basis that it is an instrumentality of the City of New York and shares the City's sovereign immunity from taxation.

C. That a not-for-profit corporation which is exempt from federal income taxation under I.R.C. §501 is exempt from the special additional recording tax

imposed under Tax Law §253.1-a(a) by virtue of Tax Law §253.1-a(b). In such case, the special additional recording tax must be paid by the mortgagee, who in this matter is the Marine Midland Bank, N.A. However, under the trust indenture between petitioner and the bank, petitioner agreed to pay all recording taxes. Pursuant to Finding of Fact "2", supra, we note that the Audit Division directed the City Register to collect the special additional recording tax from Marine Midland Bank, N.A. However, the petitioner, honoring its contractual arrangement with the bank, paid such tax. It, in effect, paid the tax on behalf of the bank. It is therefore not entitled to a refund of such tax.

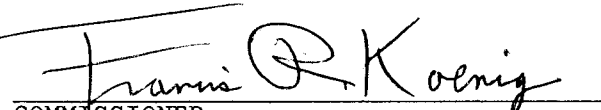
E. That we recognize and praise petitioner's accomplishments and goals. However, we are not empowered to create exceptions to the mortgage recording taxes because exceptions are established by statute. Therefore, the petition of the Intrepid Museum Foundation, Inc., for the reasons noted above, is denied.

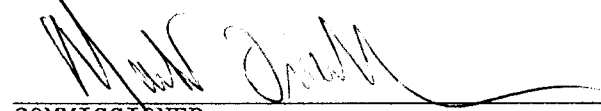
DATED: Albany, New York

STATE TAX COMMISSION

JAN 20 1984


PRESIDENT


COMMISSIONER


COMMISSIONER