

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Craig H. & Mary Jo R. Norman :
to Review a Determination under Article 11 of the :
Tax Law with Reference to a Mortgage Recorded on :
October 30, 1984. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he/she served the within notice of Decision by certified mail upon Craig H. & Mary Jo R. Norman, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Craig H. & Mary Jo R. Norman
17 Meadow Lane
Albany, New York 12208

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
18th day of February, 1986.

Doris E. Steinhardt

Jean Corry
Authorized to administer oaths
pursuant to Tax Law section 174

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

February 18, 1986

Craig H. & Mary Jo R. Norman
17 Meadow Lane
Albany, New York 12208

Dear Mr. & Mrs. Norman:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CRAIG H. NORMAN AND MARY JO R. NORMAN	:	DECISION
to Review a Determination under Article 11	:	
of the Tax Law with Reference to a Mortgage	:	
Recorded on October 30, 1984.	:	

Petitioners, Craig H. Norman and Mary Jo R. Norman, 17 Meadow Lane, Albany, New York 12208, filed a petition to review a determination under Article 11 of the Tax Law with reference to a mortgage recorded on October 30, 1984 (File No. 58186).

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 October 8, 1985 at 9:15 A.M., with all briefs to be submitted by December 18, 1985. Petitioners appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether petitioners are entitled to a refund of mortgage recording tax paid upon a mortgage made to the State of New York Mortgage Agency.

II. Whether petitioners may properly petition the State Tax Commission for a refund of recording fees paid to the Albany County Clerk at the time of recordation of their mortgage.

III. Whether petitioners have standing to petition the State Tax Commission for refund of mortgage recording tax paid by a class of persons who have also paid the tax, imposition of which petitioners contend is illegal and unconstitutional.

FINDINGS OF FACT

1. In late 1983, Craig H. Norman and Mary Jo R. Norman (hereinafter "petitioners"), obtained a mortgage commitment from the State of New York Mortgage Agency (hereinafter "SONYMA") whereby SONYMA agreed to loan petitioners the sum of \$73,000.00 at a rate of 9.75 percent for thirty years in return for the execution and delivery by petitioners of a purchase money mortgage in the principal amount of \$73,000.00 which said mortgage covered certain real property known as 17 Meadow Lane in the County of Albany, State of New York.

2. The execution and delivery of said mortgage did not occur, however, until October 30, 1984, at which time it was presented for recording at the Office of the Albany County Clerk. The Albany County Clerk advised petitioners that the mortgage could not be recorded without payment of the mortgage recording tax and a fee for the recording of the mortgage. Petitioners, therefore, paid, under protest, a mortgage recording tax in the amount of \$522.50 and a recording fee in the amount of \$38.00, both of which petitioners now seek to have refunded. The basis for petitioners' refund petition is their contention that, at the time of receipt of their mortgage commitment, section 2412 of the Public Authorities Law exempted SONYMA mortgages from the imposition of mortgage recording tax and transfer fees, and that between that time and the time of the execution, delivery and recordation of the mortgage, the aforesaid statute was amended to repeal this exemption. Petitioners contend that section 2412 of the Public Authorities Law, as amended, as applied to petitioners is unconstitutional by reason of the fact that it violates Article I, Section 10 of the Constitution of the United States which prohibits the impairment, by the States, of the freedom of contract. It is petitioners' position that their contract entered into with SONYMA was, therefore,

unconstitutionally impaired by the subsequent amendment of section 2412 of the Public Authorities Law.

3. Petitioners seek to represent all other persons who have been similarly subjected to the payment of mortgage recording tax and filing fees as the result of section 2412 of the Public Authorities Law, as amended.

CONCLUSIONS OF LAW

A. That prior to July 10, 1984, section 2412 of the Public Authorities Law provided as follows:

"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."

B. That 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 that:

"[N]o mortgage of real property situated within this state shall be exempt, and no person or corporations 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...".

C. That section 2421 of the Public Authorities Law provides, in pertinent part, as follows:

"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."

D. That, for the period prior to July 10, 1984, an apparent inconsistency existed between the provisions of the Tax Law and that of the Public Authorities Law which created SONYMA (Matter of Barry M. Gray and Rebecca Fuller Gray, State Tax Commission, December 13, 1985).

E. That, effective July 10, 1984, this inconsistency was resolved by Chapter 353 of the Laws of 1984 which amended section 2412 of the Public Authorities Law by designating the existing text as subdivision 1 and by inserting "and the tax imposed by article eleven of the tax law" so that section 2412(1) of the Public Authorities Law reads as follows:

"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 and the tax imposed by article eleven of the tax law; 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."

F. That section 257 of the Tax Law requires payment of the mortgage recording tax at the time of the recording of the mortgage by providing, in pertinent part, as follows:

"The taxes imposed by this article shall be payable on the recording of each mortgage of real property subject to taxes thereunder. Such taxes shall be paid to the recording officer of any county in which the real property or any part thereof is situated."

The mortgage was presented to the Albany County Clerk for recording on October 30, 1984 which is after the effective date of the amendment to section 2412 of the Public Authorities Law which specifically removed the mortgage recording tax imposed by Article 11 of the Tax Law from the category of exemptions from taxes and assessments granted to SONYMA. Petitioners were, therefore, properly assessed mortgage recording tax by the Albany County Clerk upon their presentation of their mortgage for recording.

G. That the laws of New York State are presumed to be constitutionally valid at the administrative level of the State Tax Commission.

H. That the State Tax Commission has no jurisdiction to issue or deny a refund of recording fees paid to the Albany County Clerk. In order to attempt to recover such fees, petitioners must commence a cause of action against the

Albany County Treasurer pursuant to the provisions of section 427 of Article 12 of the Real Property Law.

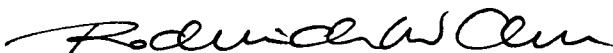
I. That Chapter IV of Title 20 of NYCRR sets forth the procedural regulations applicable to proceedings before the State Tax Commission. Since petitioners presented no proof that petitions had been filed by other persons similarly situated as required by 20 NYCRR 601.3 and also presented no proof of their authority to represent such persons pursuant to the provisions of 20 NYCRR 601.2, petitioners are without authority to represent other taxpayers.


J. That the petition of Craig H. Norman and Mary Jo R. Norman for a refund of mortgage recording tax is denied.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 10 1975


PRESIDENT


COMMISSIONER


COMMISSIONER