

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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| In the Matter of the Petition | : | |
| of | : | |
| EMPIRE BLUE CROSS AND BLUE SHIELD | : | DETERMINATION |
| | : | DTA NO. 817317 |
| for Redetermination of a Deficiency or for Refund of | : | |
| Real Estate Transfer Tax under Article 31 of the Tax Law | : | |
| for the Year 1997. | : | |

Petitioner, Empire Blue Cross and Blue Shield, One World Trade Center, 28th Floor, New York, New York 10048, filed a petition for redetermination of a deficiency or for refund of real estate transfer tax under Article 31 of the Tax Law for the year 1997.

On June 19, 2000 and July 5, 2000, respectively, petitioner by Michael H. Rosoff, Esq., and the Division of Taxation by Barbara G. Billet, Esq. (Jennifer L. Hink, Esq., of counsel) consented to have the controversy determined on submission without a hearing, with all documents and briefs to be submitted by December 8, 2000, which date began the six-month period for the issuance of this determination. Based upon the pleadings, evidence and arguments presented, Jean Corigliano, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner is entitled to a refund of real estate transfer tax pursuant to Article 31 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Empire Blue Cross and Blue Shield, and the Division of Taxation (the “Division”) entered into a stipulation of facts which has been incorporated into this

determination.

2. Petitioner is a New York State not-for-profit health services corporation licensed under Article 43 of the Insurance Law.

3. On September 19, 1997, petitioner sold certain property located at 1251 and 1285 New Scotland Road in Slingerlands (the “Slingerlands property”) to New Scotland Road, LLC (the “grantee”) for \$2 million. The Slingerlands property was bought by the grantee by its exercise of a right of first refusal.

4. As a health services corporation, petitioner is exempt from the real estate transfer tax pursuant to section 4310(j) of the Insurance Law. The grantee was not exempt from payment of this tax.

5. The amount of tax due at the time of the conveyance was \$8,000.00. The grantee indicated to petitioner that it had no contractual obligation to pay the tax. Neither petitioner nor the grantee claimed responsibility for payment of the transfer tax.

6. Petitioner and the grantee filed a Combined Real Estate Transfer Tax Return wherein a total exemption from tax was claimed. Petitioner attached an affidavit to the return, signed by its attorney, Mr. Rosoff. In his affidavit, Mr. Rosoff claimed that by virtue of section 4310(j) of the Insurance Law the conveyance to New Scotland Road, LLC was exempt from tax. The grantor and grantee were advised, however, that the deed would not be recorded until the transfer tax was paid. Petitioner then paid the tax from its own funds in order to allow the deed to be recorded.

7. Petitioner filed a real estate transfer tax claim for refund, received by the Division on October 17, 1997, in which it sought a refund of the tax paid on the ground that it is exempt from all taxes pursuant to section 4310(j) of the Insurance Law.

8. In a letter dated February 10, 1998, the Division denied petitioner's claim for refund.

As pertinent, the letter states:

As Empire Blue Cross and Blue Shield, the Grantor in the conveyance was exempt and not liable for the Real Estate Transfer Tax, it voluntarily chose to pay the tax on behalf of the grantee, New Scotland Road, LLC, which was liable for the tax.

Accordingly, to recoup the tax it paid, Empire Blue Cross and Blue Shield must seek recourse from the Grantee not NY State.

9. Petitioner filed a request for a conciliation conference which was received by the Division on April 10, 1998. A Conciliation Order was issued on July 2, 1999 denying petitioner's request for a tax refund. Subsequently, petitioner filed a petition in the Division of Tax Appeals requesting a refund of the entire amount of the real estate transfer tax paid.

CONCLUSIONS OF LAW

A. The real estate transfer tax is "imposed on each conveyance of real property or interest therein" (Tax Law § 1402[a]). Tax Law § 1405 provides an exemption from the payment of the real estate transfer tax to certain entities (Tax Law § 1405[a]) and on certain types of conveyances (Tax Law § 1405[a]). Petitioner is not exempt from the real estate transfer tax under these provisions of the Tax Law. However, petitioner is a not-for-profit health services corporation licensed under Article 43 of the Insurance Law, and as such, it is "exempt from every state, county, municipal and school tax" (Insurance Law § 4310[j]). Accordingly, petitioner is exempt from the real estate transfer tax by operation of Insurance Law § 4310(j).

B. As pertinent, Tax Law § 1404(a) provides:

The real estate transfer tax shall be paid by the grantor. If the grantor failed to pay the tax imposed by this article at the time required by section fourteen hundred ten of this article *or if the grantor is exempt from such tax*, the grantee shall have the duty to pay the tax. (Emphasis added.)

Although an exempt grantor, petitioner paid the real estate transfer tax at the time of the conveyance in order to allow recording of the deed. It now claims a refund of the tax it paid.

The Division acknowledges that petitioner is exempt from payment of the real estate transfer tax; however, it contends that petitioner, although not obligated to do so, voluntarily paid the tax on behalf of the grantee and that it must now seek its remedy from the grantee and not from the State.

Petitioner's position is that Insurance Law § 4310(j) prohibits the imposition of tax on any conveyance of realty by or to an Article 43 corporation like itself, and it argues that Tax Law § 1404(a) should be treated as a nullity to the extent that it imposes the transfer tax on a grantee of an Article 43 corporation. According to petitioner, the tax cost inevitably will be borne by the Article 43 corporation as a result of contractual negotiations over the purchase price of the real property. This result, argues petitioner, is contrary to the legislative purpose expressed in Insurance Law § 4310(j) because it results in an indirect imposition of tax upon petitioner. To avoid this result, petitioner would construe the relevant provisions of the Insurance Law and the Tax Law to exempt all transactions involving petitioner from taxation. Petitioner's arguments in support of its position will be considered separately.

C. First, petitioner contends that the specific provision of the Insurance Law exempting it from tax must override the provisions of the Tax Law. The only way this argument can have any force is to construe the Insurance Law as providing a tax exemption for all transactions involving petitioner. I agree with the Division that the Insurance Law provision cannot be construed so broadly. It provides an exemption to petitioner and not an exemption for every transaction involving petitioner. I also agree with the Division that the Tax Law does not impose an obligation on petitioner to pay the real estate transfer tax; therefore, there is no conflict between

the Insurance Law provision exempting petitioner from tax and the Tax Law provision placing the duty to pay the tax on the grantee.

D. Petitioner claims that Tax Law § 1404(a) should be construed against the taxing authority because the language imposing the tax on the grantee is ambiguous when read in conjunction with the exemption provision of the Insurance Law. I disagree. The words of section 4310(j) of the Insurance Law and of section 1404(a) of the Tax Law are clear and unambiguous; therefore, there is no need to resort to extrinsic sources to interpret those provisions (*see, Segal v. State of New York*, 60 NY2d 183, 191, 469 NYS2d 51). As a not-for-profit corporation licensed under Article 43 of the Insurance Law, petitioner is “exempt from every state, county, municipal and school tax” (Insurance Law § 4310[j]). Where “the grantor is exempt from the real estate transfer tax, the grantee shall have the duty to pay the tax” (Tax Law § 1404[a]). I do not perceive conflict or ambiguity in these statutes; and therefore, I find no reason to resort to extrinsic sources to construe these provisions.

There is only one way to achieve the result petitioner seeks. That is to construe Insurance Law § 4310(j) as providing an exemption from tax for all transactions involving petitioner. There is no support in the statutory language for such an interpretation. Section 4310(j) provides an exemption to petitioner as an entity; it does not provide a transactional exemption to petitioner. One of the cases relied on by petitioner demonstrates the weakness in its argument. The statutory provision in issue in *Empire State Building Corp. v. City of New York* (26 AD2d 320, 274 NYS2d 208), Administrative Code of the City of New York former § 146-6.0, is very similar to Tax Law § 1404(a). It exempts the United States of America (“USA”) from realty transfer tax but adds “that the exemption . . . shall not relieve a grantee from them of liability for the tax.” Reversing a lower court decision which found the grantee liable for the tax, the court

held that the Administrative Code went beyond the legislative authorization expressed in the enabling act which authorized the City to impose a realty transfer tax. The enabling act provides, as pertinent: “This act shall not authorize the imposition of a tax *on any transaction by or with the following*: . . . the United States of America, insofar as it is immune from taxation.” (L 1934, ch 873, § 1, as amended by L 1952, ch 742, § 5; emphasis added.) The court held that the City’s promulgation of a law which attempts to tax a transaction involving the USA was in contravention of the enabling act, and therefore, illegal.

The language of Insurance Law § 4310(j) does not provide petitioner with the broad exemption from taxation provided to the USA in the enabling act discussed in *Empire State*. If the Legislature wanted to adopt such a provision it could have as it did in passing the enabling act discussed in *Empire State*. The Legislature did not do so. It provided a tax exemption to Article 43 corporations, but it placed the liability for the real estate property tax on the grantee whenever the grantor is exempt from the tax.

As the Division notes in its brief, Tax Law § 1404(a) was enacted in 1968 (L 1968, ch 347), two years after the exemption for health services corporations was enacted (L 1966, ch 893). The Legislature is presumed to have known of the health services corporations exemption and to have acted deliberately when it shifted the burden of the real estate transfer tax to the grantee where the grantor is exempt from tax. Therefore, petitioner’s contention that section 1404(a) of the Tax Law conflicts with the Legislature’s intention to free it from the burden of taxation is unpersuasive.

E. Petitioner cites many examples to support its contention that the Legislature intended to provide relief from taxation to Article 43 corporations which are formed to serve a public purpose and confer a public benefit (*see, e.g., Health Services Medical Corporation of Central*

New York v. Chassin, 175 Misc 2d 621, 668 NYS2d 1006). Tax relief is provided to petitioner by Insurance Law § 4310(j). But the relief afforded is to petitioner as an entity and not to every transaction to which petitioner is a party. The language of Insurance Law § 4310(j) cannot be read that broadly.

F. Finally, I reject petitioner's contention that denying it a refund serves no public purpose. Collection of taxes serves a public purpose, and the Legislature, which imposes the tax, has the sole prerogative to create exemptions from tax. It is for this reason that statutes creating tax exemptions are to be strictly and narrowly construed (*Matter of Blue Spruce Farms v. New York State Tax Commn.*, 99 AD2d 867, *aff'd* 64 NY2d 682). In this instance, the legislative enactment is clear and unambiguous, and it affords no relief to petitioner where it voluntarily chose to pay the real estate transfer tax on behalf of the grantee.

G. The petition of Empire Blue Cross and Blue Shield is denied, and the denial of its claim for refund is sustained.

DATED: Troy, New York
April 19, 2001

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE