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Taxation—New York Mortgage Tax: Immunity of Contractor under Federal Housing Act

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tions taxable would subject a large number of these instruments to taxation and the penalties of New York Tax Law Section 258 until such tax was paid.[43]

NEW YORK MORTGAGE TAX: IMMUNITY OF CONTRACTOR UNDER FEDERAL HOUSING ACT

The National Housing Act provides an elaborate scheme for the construction of military housing by a private contractor with funds received from mortgages which are insured by F.H.A., and paid by the Department of Defense out of funds provided for quarters allowance.[44] The petitioner in *Silverblatt, Inc. v. Tax Comm'n of State*,[45] as low bidder, was awarded the contract for construction of on-base housing at Plattsburg Air Force Base. Pursuant to the contract he formed five private corporations which leased the land from the Defense Department for a sum equal to their paid-in capital stock. They then borrowed money in the amount of the contract price, securing their notes by five mortgages on the leased property. These mortgages were insured, and payment of the notes guaranteed, by the Federal Government. The Court of Appeals held that these mortgages were not immune from the state mortgage recording tax.[46]

Section 511 of the National Housing Act provides for the immunity from state or local property taxes of the leasehold interest of a lessee from the Federal Government.[47] This does not apply to the mortgage recording tax since New York considers the incident of taxation there to be the privilege of recording a mortgage and, therefore, it is not a property tax.[48] Under the building contract the entire capital stock of the mortgagor-corporations was placed in escrow to be transferred to the government when the construction was finished. The Defense Department was liable for the payment of the mortgage principal and interest and also took over and managed each unit upon completion. In other words, the financial arrangements were a mere bookkeeping device on the part of the government. The Court, however, felt that the corporations were created for commercial purposes by the petitioner and, since they remained an entity separate from the Federal Government, they were not immune from taxation as agencies of the government. Judge Van Voorhis dissented on both points. He felt that Federal law controlled.[49] Hence, the incident of tax was

43. This section provides that no mortgage subject to the recording tax shall be released, discharged of record or received in evidence in any proceeding; nor shall any assignment or extension of it be recorded; nor shall any judgment or final order for the foreclosure or enforcement of it be made, until the tax is paid. It also provides for an additional sum to be paid as a penalty if a mortgage has been recorded without the payment of the tax.

44. 42 U.S.C. §§ 1594-1594-g (1956).

45. 5 N.Y.2d 635, 186 N.Y.S.2d 646 (1959).

46. N.Y. TAX LAW, § 253.

47. Housing Act of 1956, § 511, 70 Stat. 1110, 42 U.S.C. § 1594.

48. Franklin Society for Home Building and Savings v. Bennett, 282 N.Y. 79, 24 N.E.2d 854, *appeal dismissed* 309 U.S. 640 (1940).

49. United States v. County of Allegheny, 322 U.S. 174 (1944).

on the mortgage itself.[50] He also felt that under the statutory scheme the United States was sponsor, financier and owner of the entire project, and the corporations mere fictions created to act as agents for the Federal Government, and as such not taxable.[51]

United States v. City of Detroit,[52] is indicative of the Supreme Court's position that it will not interfere with state taxation of private parties, although they may be engaged in governmental functions. However, it is still true ". . . that possessions, institutions, and activities of the Federal Government itself . . . are not subject to any form of state taxation."[53] The Court of Appeal's decision not to disregard the mortgagor's corporate entity would seem to be in keeping with the current trend, although it is possible that the taxpayers under this arrangement are so closely identified with the Federal Government that the incidence of taxation could be held to fall on the United States.[54]

TORTS

UNFAIR COMPETITION—INJUNCTION FOR BAIT ADVERTISING

"Unfair competition" is a concept which for years has challenged the abilities of courts to define legal relationships.[1] The opportunity was recently presented to the New York Court of Appeals in the case of *Electrolux Corp. v. Val-Worth Inc.*[2] However, the decision handed down does not appear to clarify the concept. Rather, it would seem that there is greater confusion now than ever.

Plaintiff Electrolux accepted old vacuum cleaners in trade on its new models. It would then sell them to defendant at seven dollars apiece. The latter reconditioned them with non-Electrolux parts and sold them as reconditioned Electroluxes. This went on for a period of about five years, during which time Electrolux refused to sell its own parts to defendant. In 1952, defendant inaugurated an advertising program on television offering the rebuilt machines (using the name Electrolux) at $14.95, which was less than their actual cost. When viewers answered the ads, a salesman would be dispatched to the home. Upon gaining entry, he would proceed to "knock" the Electrolux as "a piece of junk" and make other disparaging remarks about it. He would then attempt to sell a new competing brand to the potential customer. If he was pressed

50. Pittman v. Home Owners' Loan Corp., 308 U.S. 21 (1939); Federal Land Bank of New Orleans v. Crosland, 261 U.S. 374 (1923).
51. Clallam County v. United States, 263 U.S. 241 (1923).
52. 355 U.S. 466 (1958).
53. United States v. County of Allegheny, *supra*, note 49, at 177.
54. See concurring opinion, City of Detroit v. Murray Corp. of America, 355 U.S. 489, 499 (1958); Kern-Limerick, Inc. v. Scurlock, 347 U.S. 110 (1954).

1. Chafee, *Unfair Competition*, 53 HARV. L. REV. 1289 (1940).
2. 6 N.Y.2d 556, 190 N.Y.S.2d 977 (1959).