

FROM

NEW YORK TAX REFORM ASSOCIATION,  
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LAW OFFICES OF

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NEW YORK, April 1st, 1905.

Mr. EDWARD VAN INGEN,

Chairman Executive Committee of the Allied Real Estate Interests of the State  
of New York:

MY DEAR SIR—In reply to your request for an opinion regarding the Mortgage Tax Bill now before the Legislature, I beg to call attention to a few of the many objectionable features of the Bill.

*First.*—The Bill imposes an annual tax of one-half of one per cent. upon all mortgages recorded after the first of June, 1905, but another provision of the act provides that where any portion of the principal of a mortgage made before the first of June, 1905, is advanced after that date, the same tax shall be imposed upon such subsequent advance. This provision would have a serious effect upon a large class of builders' loans and other mortgages now existing. These mortgages contain clauses by which, in case of the imposition of a tax like the one in question, it is possible for the lender to call the principal of such mortgages and to refuse to make further advances. The effect of this upon the building trades would be serious, leading to many foreclosures and rendering impossible the completion of buildings now in process of construction.

*Second.*—The Act also provides that before entering a decree for the foreclosure of a mortgage a receipt must be produced to the Court showing the payment of all taxes

which may have accrued on the mortgage debt. The tax accrues on the first of July, but cannot be paid before the first day of October, and, therefore, the receipt required by the act cannot be produced; consequently, no decree of foreclosure can be entered between the first day of July and the first day of October in any year.

*Third.*—The act provides that any agreement by which the borrower agrees to pay the tax shall be usurious and void, and no judgment shall be obtained in any Court for the foreclosure of the mortgage, unless it shall be made to affirmatively appear that the borrower has not at any time paid any portion of the tax, and that at no time has there been any understanding or agreement that the borrower should pay the tax. This provision would make it almost impossible to foreclose any mortgage. The burden of proof is put upon the holder of a mortgage to show affirmatively that the borrower never made any agreement to pay the tax. Therefore, if the lender should die, the mortgage might be void because it would be difficult, or in some cases impossible, to prove that no such agreement had been made by him. The owner of an assigned mortgage might be absolutely at the mercy, as to the validity of his security, of a party who would profit to the whole extent of the mortgage, principal and interest, if the foreclosure were prevented. Also if the borrower and lender were both dead, it would be impossible for the holder of the mortgage to prove that no such agreement had ever been made, and, therefore, the mortgage could not be foreclosed.

*Fourth.*—The provisions of the Act relating to the method of correcting an erroneous valuation of the mortgage made by the recording officer in case the mortgage has been reduced by payments, are most cumbersome, requiring on the appeal to the recording officer and on the further appeal allowed to the State Board of Tax Commissioners, voluminous papers executed in triplicate and the payment of the tax estimated in these statements. The cost of such proceedings as these to obtain a simple reduction would be so great as to prevent many persons, especially non-residents, from loaning money on bonds and mortgages.

*Fifth.*—The Act provides that no Court shall interfere by injunction, or otherwise, with any officer while acting under color of any authority contained in the Tax Law, and

that no review by *certiorari*, or otherwise, of any official action under this article shall be allowed save for jurisdictional defects in such action, or where an exemption is claimed. Thus the decision of the State Board of Tax Commissioners is made absolutely final and conclusive, and this is probably the only tax act under which it is impossible to review the assessment made by the assessing officer upon the property of a tax-payer.

*Sixth.*—The provisions of the Act relating to the collection of delinquent taxes are most unjust towards the tax-payer.

After the first Monday of January, the taxes are deemed delinquent, and the mortgage security can be seized and offered for sale. No personal notice of any kind is required to be given to the holder of the mortgage security, the Act providing simply for a notice by publication. The absolute title to the mortgage is sold upon this sale to the highest bidder and the title of the purchaser becomes absolute at the expiration of six months from the date of the assignment. No notice, either personal or by publication, is required to be given to the holder of the mortgage security to redeem within this six months. If, through any inadvertence, sickness, death or absence, he has unintentionally neglected to pay the tax, he can thus be absolutely deprived of his mortgage without any method by which he can obtain relief.

*Seventh.*—The Act provides that executory contracts for the sale of real estate under which the vendee is entitled to the actual possession of the property, shall be treated as mortgages for the purposes of this article; consequently if a man sells property to a tenant, the seller will have to pay a tax of one-half of one per cent. on the whole purchase price. If, subsequently, the seller on the closing of the title takes back a purchase money mortgage, he must pay a tax on this mortgage also.

*Eighth.*—Mortgages are taxed at their face value, even although, as in the case of junior mortgages, they may have a much smaller actual value. Mortgages given as collateral security are taxed at their face value, or where the amount is not stated, then at the assessed value of the land mortgaged, although nothing is due or may ever become due thereon.

*Ninth.*—The provisions of this Act are complicated, ambiguous and harsh, requiring active vigilance on the part of loaners of money to protect their securities, and it is prob-

ably necessary for the mortgage paper to be actually exhibited each year to the recording officer to have the receipt for the tax endorsed thereon.

Many other objections could be urged against the form of this proposed mortgage tax law, but these, to which I have called your particular attention, are sufficient to show how obnoxious and how injurious the proposed Bill is.

Very truly,

JABISH HOLMES, JR.