Supreme Court, New York County, Index No. 106732/09

State of New York
Court of Appeals

HUDSON VALLEY FEDERAL CREDIT UNION

Plaintiff-Appellant,

-against-

NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, et al.,

Defendants-Respondents.

BRIEF OF THE AMERICAN BANKERS ASSOCIATION AND THE NEW YORK BANKERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE

Dated: May 17, 2012

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DISCLOSURE STATEMENT PURSUANT TO RULE 500.1(f)

In compliance with Rule 500.1(f) of the Rules of Practice for the Court of Appeals of the State of New York, the American Bankers Association ("ABA") states that it is not a subsidiary of any other entity. The ABA is a non-profit corporation located in the District of Columbia with the following subsidiaries and affiliates: (1) ABA Securities Association, (2) ABA Education Foundation, (3) ABA Housing Partners Foundation, (4) ABA Business Solutions, Inc., (5) American Bankers Insurance Association, (6) BAFT-IFSA, (7) BANKPAC, (8) Corporation for American Banking LLC, and (9) Institute of Certified Bankers LLC.

The New York Bankers Association also does not have a parent entity, but has the following subsidiaries and affiliates: (1) Circuit Agency, Inc., (2) the New York Bankers Service Corporation ("NYBSCO"), (3) the Group Creditors Insurance Trust, (4) the Group Employee Insurance Trust, (5) Trustees Life Insurance Company, and (6) the New York Bankers Retirement System.

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PRELIMINARY STATEMENT

The American Bankers Association and the New York Bankers Association together submit this brief as *amici curiae* in support of the New York State Department of Taxation and Finance in this appeal. *Amici* believe that the May 2010 decision of the Supreme Court, New York County (Gische, J.),[1] which dismissed the action filed by the Hudson Valley Federal Credit Union ("Hudson Valley") and the June 2011 affirmance of that dismissal issued by the New York Supreme Court Appellate Division (First Department)[2] were correct as a matter of law. Federal credit unions and their member/borrowers are neither exempt nor immune from the New York mortgage recording tax at issue here.

THE INTEREST OF THE AMICI AMERICAN BANKERS ASSOCIATION AND NEW YORK BANKERS ASSOCIATION IN THIS ACTION

The American Bankers Association ("ABA") is a national trade association that represents the interests of thousands of member banks, savings associations, and other financial institutions. The ABA is widely regarded as the principal national trade association of the financial services industry because its members include financial institutions of all sizes, located in each of the fifty states, and

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[1] *Hudson Valley Fed. Credit Union v. New York State Dep't of Taxation and Fin.*, 906 N.Y.S.2d 680 (N.Y. Sup. Ct. 2010) (hereafter "*Hudson Valley I*").

[2] *Hudson Valley Fed. Credit Union v. New York State Dep't of Taxation and Fin.*, 924 N.Y.S.2d 360 (1st Dep't 2011) (hereafter "*Hudson Valley II*").

holding approximately 90% of the domestic assets of the banking industry in the United States.

The New York Bankers Association ("NYBA") is a trade association comprised of 150 community, regional and money center commercial banks and thrift institutions doing business in New York State. NYBA's members have in aggregate more than $10 trillion in assets and more than 200,000 New York employees.

While the ABA and the NYBA acknowledge the limited tax exemption provided to federal credit unions by the U.S. Congress in the Federal Credit Union Act ("FCUA"), 12 U.S.C. § 1768, Hudson Valley's position in this appeal expands that tax exemption beyond its clear terms. In so doing, Hudson Valley seeks to obtain unwarranted competitive advantage over the hundreds of other mortgage lenders – and/or those lenders' thousands of mortgage loan customers – who are required to pay the mortgage recording tax ("MRT")[3] when new mortgages are recorded for loans made on real estate located in the State of New York. Like the New York Supreme Court and the Appellate Division, this Court should not

[3] As used in this brief, "MRT" refers only to the mortgage recording tax at issue here and not to the "special additional mortgage recording tax" or any other state taxes not at issue in this appeal.

countenance Hudson Valley's attempt to avoid the MRT while its financial competitors (and their customers) dutifully continue to pay it.

STATEMENT OF THE CASE

New York's mortgage recording tax is not unique; many states impose such taxes. *See* Mar. 19, 2012 Brief of Respondents New York State Department of Taxation and Finance, *et al.* (hereafter "Respondents' 3/19/12 Br.") at 4, n.1. These taxes are paid every day by mortgage lenders of all kinds and/or by their borrowers when mortgages are recorded following the making of real estate loans. Hudson Valley itself did not object to the MRT for many decades, collecting the tax from its borrowers as part of the mortgage loan closing process and sending the funds on to the state tax authorities.[4] Similarly, the ABA and NYBA are not aware of any of their members' objecting to New York's MRT, which is typically paid by their members' borrowers and not the lenders themselves when a new mortgage loan is made and the mortgage recorded in the appropriate county of New York.

Three years ago, however, Hudson Valley decided that it – and other federal credit unions – should not have to pay the New York MRT paid by all other banks,

[4] Because of the FCUA's tax exemption provisions, the New York Department of Taxation already exempts Hudson Valley and other federal credit unions from paying state taxes that would otherwise be levied directly on federal credit unions, such as state sales taxes and the "special additional" mortgage recording tax (the latter of which New York law requires to be paid by lenders and not their borrowers). *See* Respondents' 3/19/12 Br. at 6-7, 11-12. But Hudson Valley FCU is apparently not satisfied with this clear advantage already conferred by the FCUA; it wants an additional tax advantage *not* authorized by Congress in the FCUA.

savings associations, and state credit unions that make mortgage loans secured by properties located in New York. In its 2009 Complaint against the New York State Department of Taxation and Finance, Hudson Valley argued that it was "exempt from all federal taxation and virtually all state and local taxation." Complaint ¶ 8.[5] Without disclosing in its Complaint that it usually passes the cost of the MRT on to its borrowers, Hudson Valley argued that the "burden to pay the tax" fell upon it "and other federal credit unions" because unless the MRT is paid, the mortgage debt is not secured against subsequent purchasers of the security property. *Id.* ¶ 11.[6]

In support of its Complaint and now in support of its appeal, Hudson Valley has advanced two principal arguments: (1) that because the MRT does not fall on real property or tangible personal property of the federal credit union – which Hudson Valley acknowledges may be taxed by state authorities – the MRT is therefore exempt from taxation under the Federal Credit Union Act; and (2) because Hudson Valley and other federal credit unions allegedly are

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[5] The governing statute of course does not exempt federal credit unions from *all* or *virtually all* state and local taxes because the FCUA permits taxation of "any real property and any tangible personal property of . . . Federal credit unions . . . to the same extent as other similar property is taxed." *See* 12 U.S.C. § 1768.

[6] From reading Hudson Valley's Complaint, one would not even know that the MRT is paid in connection with the recording of *all* new mortgages that are granted for real estate loans in New York, and not just for mortgage loans made by credit unions. *See* Complaint ¶ 11: "The burden to pay the tax . . . falls upon HVFCU and *other federal credit unions* since defendants require payment of the tax to record mortgages given to secure *federal credit union loans* pursuant to New York Real Property Law § 291 . . . ." (Emphases added.)

"instrumentalities of the United States government," they are also immune from taxation under the Supremacy Clause of the U.S. Constitution. The New York Supreme Court rejected Hudson Valley's first argument because it found the MRT to be a tax on the privilege of recording a mortgage and not a tax on property belonging to Hudson Valley. *Hudson Valley I*, 906 N.Y.S.2d at 686-87. The court found Hudson Valley's Supremacy Clause argument irrelevant because the federal statute at issue defines the tax exemption granted to federal credit unions in such a way that it clearly does not reach New York's MRT. Thus, there was no need for the court to also conduct a Supremacy Clause analysis. *Id.* at 687-688. Indeed, the FCUA statute clearly does not grant an exemption for taxes paid by *borrowers*; the statute expressly exempts only taxes paid on the property or income of the credit union itself:

> Federal credit unions . . . *their* property, *their* franchises, capital, reserves, surpluses, and other funds, and *their* income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property *of such Federal credit unions* shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed.

12 U.S.C. § 1768 (emphases added).

In their effort to avoid the MRT, Hudson Valley and its *amici* ask this Court to wade through complicated and irrelevant arguments to determine, *inter alia*,

whether federally chartered credit unions are a "virtual arm" of the United States Government – arguably making them constitutionally immune from *all* state mortgage recording taxes. *See* Hudson Valley's 12/19/11 Br. at 44-49. None of this is necessary. Instead, to complete its analysis, this Court need only address a narrow question of statutory interpretation: Does the FCUA prohibit New York from collecting mortgage recording taxes from federally chartered credit unions or from their members? The plain meaning of the statute makes clear that Congress exempted neither federal credit unions nor their members from paying their fair share of New York's mortgage recording tax. This is true whether or not the affected credit unions are "federal instrumentalities."

ARGUMENT

I. Hudson Valley Seeks a Novel Interpretation of the FCUA in Order to Obtain a Competitive Business Advantage Over Other Financial Institution Lenders in New York.

As the ABA and NYBA *amici* and their members are well aware, the business of banking is subject to pervasive federal legislation, regulation, and supervision of all kinds. Indeed, Congress has not hesitated to address a wide variety of banking and credit union issues in the last century. But Congress has never amended the FCUA to state that taxes paid by credit union members or taxes paid for the privilege of recording mortgages should be exempt from taxation. Hudson Valley's attempt to avoid the MRT in order to gain a competitive business

advantage over its many competitors ignores the absence of statutory support for its position.

The statute at issue resolves both of the appellant Hudson Valley's principal arguments – as the lower courts have already found. The New York Supreme Court's Appellate Division held in its 2011 decision that "the MRT is not a tax on property and therefore not included in the FCUA tax exemption." *Hudson Valley II*, 924 N.Y.S.2d at 361. The Appellate Division also pointed out that Congress had amended the FCUA several times over the years, but Congress never amended it to specifically exempt credit union mortgage loans from the state MRT, which Congress certainly could have done had it wished to expand the credit union tax exemption in the manner desired by Hudson Valley. *Id.* at 362.[7]

Hudson Valley has revealed its intent to obtain a competitive advantage over other lenders by its argument that it does not matter whether Hudson Valley's borrowers pay the MRT because the MRT is "tantamount to a tax on federal credit unions themselves." *See* Hudson Valley's 12/19/11 Br. at 2. But if this Court

[7] The Appellate Division also observed that the U.S. Supreme Court decisions relied upon by Hudson Valley do not support Hudson Valley's principal argument because each of the cases involved federal statutes that expressly exempted "mortgages," "loans," or "advances" of the lenders – which language does not appear in the FCUA. *Id.* at 361. *See e.g., Laurens Fed. Sav. & Loan Ass'n v. S.C. Tax Comm'n,* 365 U.S. 517, 519 (1961) ("advances" expressly exempted from taxation under the governing statute); *Pittman v. Home Owners Loan Corp. of Washington D.C.*, 308 U.S. 21, 31 (1939) ("loans" expressly exempted from taxation under applicable statute); *Fed. Land Bank of New Orleans v. Crosland*, 261 U.S. 374, 377 (1923) ("mortgages" expressly exempted from taxation). No such language appears in the FCUA.

finds that both Hudson Valley and its borrowers are exempt from the MRT, then federal credit unions would be able to provide their members "MRT-free loans," which no other bank, savings association, or state credit union in New York could offer. This is an advantage that Congress could have expressly conferred on federal credit unions had it wished to do so, but Congress has not done this.[8]

The credit union trade association *amici* that support Hudson Valley reveal the same motive. They argue for a broad tax exemption to prevent credit unions from being "taxed out of existence by a state" like New York. *See* Credit Union Ass'n of N.Y. and Credit Union Nat'l Ass'n ("CUNA") 12/19/11 Br. at 19. But this argument is a straw man that is irrelevant to this appeal. The only state tax at issue here is the MRT, and there is no assertion that its payment has actually taxed any credit unions out of existence. Moreover, the MRT is paid today by every financial institution lender making mortgage loans on property located in New York State – usually by the lender's passing the tax onto its borrower or, occasionally, by paying it on behalf of the borrower. But again, if the selective anti-tax views of the credit union *amici* were to prevail, the only entities that would

[8] The "advantage" sought by Hudson Valley may be exemplified by the MRT that would be due upon the recording of a mortgage for a $200,000 loan on real property located in Dutchess County, New York, which is the home county of Hudson Valley's headquarters office. The required MRT for recording such a mortgage would be $2,100 (based on the rate of $1.05 per $100 of loan balance as reported at http://www.tax.ny.gov/pdf/memos/mortgage/m09 9r.pdf). Hudson Valley seeks to avoid all such payments of the MRT throughout New York State.

benefit would be federal credit union lenders and none of the other mortgage lenders in New York.[9]

Interspersed throughout the appellate briefs in support of Hudson Valley are suggestions that federal credit unions deserve extra consideration or leniency in this tax dispute because they serve lower income members or members of the working class. *See, e.g.*, Hudson Valley's 12/19/11 Br. at 43-44; Hudson Valley's 4/5/12 Reply Br. at 12.[10] It is unclear how or why such assertions might assist a straightforward question of statutory interpretation, but the record should be corrected in any event – particularly when it is Hudson Valley that seeks a legal and practical advantage over its many banking competitors in New York. In fact, according to Hudson Valley's Home Mortgage Disclosure Act ("HMDA") data, 42.6% of all its mortgage loans in a recent year went to upper income borrowers, and 31.2% went to middle income borrowers.[11] Only 6.0% of Hudson Valley's

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[9] The same is true of Hudson Valley's new argument that "New York has engaged in blatant discrimination" by requiring federal credit unions borrowers to pay the MRT while certain "state instrumentalities" are exempt from the tax. *See* Hudson Valley's 4/5/12 Reply Br. at 21-22. Hudson Valley borrowers currently pay the exact same MRT paid by all other kinds of financial institution borrowers in New York. This is not discriminatory or otherwise unfair.

[10] *See also id.* at 22 (referring to the "ordinary Americans whose home purchases would be impossible without federal credit union loans . . . .") and CUNA's 12/19/11 Br. at 24-25 (citing the credit union mission to make credit more available to "people of small means" and to "persons of modest means").

[11] For this purpose, "upper income" is defined as having income equal to or greater than 120 percent of the applicable Metropolitan Statistical Area's ("MSA") median income. "Middle income" represents between 80 percent and 119 percent of the MSA's median income.

loans were made to "low-income" borrowers. *See* Exhibit A. Moreover, a 2009 study by the National Community Reinvestment Coalition ("NCRC") concluded that "large credit unions do not serve people of modest means as well as mainstream banks," citing "fair credit indicators" of several kinds.[12]

As to credit unions more generally throughout the country, a 2006 study by the U.S. Government Accountability Office ("GAO") showed that credit unions lagged behind banks in serving low to moderate income persons.[13] The GAO found that "14 percent of credit union customers were of low-income and 17 percent were of moderate-income, compared with 24 and 16 percent for banks." *Id.* at 20. GAO also found that 49 percent of credit union customers were of upper-income compared to 41 percent for banks. *Id.*[14] And yet the banks that are

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"Moderate income" represents between 50 percent and 79 percent of the MSA's median income and "low-income" persons have under 50 percent of the MSA's income.

[12] *See* NCRC, *Credit Unions: True to Their Mission? (Part II)*, 4 (2009), *http://www.ncrc.org/images/stories/mediaCenter_reports/creditunionreport09309.pdf.* The earlier Part I of the same study demonstrated that banks also did better than credit unions in fair lending indicators *in the State of New York* in particular. *See* NCRC, *Credit Unions: True to Their Mission?*, 35-42 (2005).

[13] *See* United States Government Accountability Office, *Greater Transparency Needed on Who Credit Unions Serve and on Senior Executive Compensation Arrangements*, GAO-07-29 (Nov. 30, 2006), http://www.gao.gov/assets/260/254099.pdf.

[14] In addition, a 2006 report issued by the National Credit Union Administration found that only 18.68% of federal credit union members are either low or moderate-income individuals, while 30.85% of credit union members are upper-income individuals. *See* NCUA *Report to the NCUA Board on the Member Service Assessment Pilot Program: A Study of Federal Credit Union Service*, 28-30 (Nov. 3, 2006), http://archive.ncua.gov/Resources/Reports/MSAP/MSAP-Pilot.pdf.

lending more (than federal credit unions) to lower and middle income individuals in New York all pay New York's MRT. Only federal credit unions now seek an exemption from paying the MRT.

II. There is No Statutory Basis for the Tax Immunity Sought By Hudson Valley.

In all of its briefing in this dispute, Hudson Valley has declined to explain exactly who pays the MRT for mortgages recorded after real estate loans are made – the borrowers who obtain a mortgage loan from Hudson Valley or Hudson Valley on behalf of its borrowers.[15] Either way, a plain reading of the FCUA makes clear that it does not grant tax immunity to credit union borrowers or to credit unions for tax payments made on behalf of those borrowers. The FCUA also does not exempt either "mortgages" or "loans" from taxation.

The FCUA exempts federal credit unions from some (not all) forms of taxation, including taxes on property, franchises, capital, reserves, surpluses, and income. *See* 12 U.S.C. § 1768. The statute does not exempt federal credit union *members* or *borrowers* or federal credit union *loans* or *mortgages* from state taxation. *See id.* Appellant ignores this fact and instead asserts that Congress drafted tax exemptions in the FCUA "flexibly" to include "*by extension*, all of

[15] The Respondents' brief explains that state taxes like the New York MRT are almost always paid by borrowers, either directly or indirectly, and not by the lenders. *See* 3/19/12 Respondents' Br. at 6-8. Moreover, the Respondents note that Hudson Valley's members/borrowers typically pay the MRT when they obtain a mortgage loan, but in some smaller number of instances, Hudson Valley agrees to pay some or all of the MRT for its borrowers. *Id.* at 12.

[federal credit unions'] activities and appurtenances." Hudson Valley's 12/19/11 Br. at 21-22 (emphasis added). It is, however, a settled rule of statutory construction that courts should not add words to a statute that Congress did not include. *See Iselin v. United States*, 270 U.S. 245, 251 (1926) ("[t]o supply omissions transcends the judicial function"); *see also Lamie v. United States Tr.*, 540 U.S. 526, 538 (2004) ("there is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted"). Hudson Valley's "flexible" reading of the FCUA to include "mortgages" or "loans" requires this Court to impermissibly add statutory language that Congress did not place in the statute.

Moreover, Congress has amended the FCUA more than 50 times since it was passed in 1934, including multiple amendments to increase the lending and other powers of federal credit unions. But in none of these instances did Congress also amend the statutory tax exemptions quoted above to include "mortgages" or "loans." In *Barnhart v. Peabody Coal Co.*, the U.S. Supreme Court explained that "[w]e do not read the enumeration of one case to exclude another *unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it.*" 537 U.S. 149, 168 (2003) (emphasis added). That is precisely the circumstance here. It would have been simple to add "loans" or "mortgages" to the FCUA, as Congress has done in other statutes. Compare, for example, the

statutory language at 12 U.S.C. § 1723a(c), which grants the Government National Mortgage Association and the Federal National Mortgage Association the following:

> (c) Exemption from taxation
> (1) The Association, including its franchise, capital, reserves, surplus, *mortgages or other security holdings*, and income shall be exempt from all taxation now or hereafter imposed by the United States . . . or by any State, county, municipality, or local taxing authority, except that any real property of the Association shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

12 U.S.C. § 1723a(c) (emphasis added). The above-quoted language is strikingly similar to the language in the FCUA, except that the FCUA does not say "mortgages or other security holdings." Clearly, Congress is willing and able to expressly exempt "mortgages" from all state taxes in certain circumstances, but Congress has not chosen to do so for federal credit union mortgages or loans.[16] In *Pittman v. Home Owners Loan Corp.*, the Court found a state recording tax assessed on a former federal entity, the Home Owners Loan Corporation, to be inappropriate because the statute specifically stated that "loans" held by the

[16] *See also* the National Consumer Cooperative Bank's statute at 12 U.S.C. § 3019 ("The Bank, including its franchise, capital, reserves, surplus, *mortgages, or other security holdings* and income shall be exempt from taxation . . . by any State . . . [except for taxes on real property].") Nearly identical language exempts the Student Loan Marketing Association from state taxation on "mortgages" at 20 U.S.C. § 1087.2(b)(2) (emphasis added). And other specific statutory language exempts the "mortgages" held by Federal Land Banks from taxation at 12 U.S.C. § 2098, and the "mortgages" held by Farm Credit Banks at 12 U.S.C. § 2023.

Corporation were exempt from taxation. 308 U.S. at 31. However, neither of the terms "loans" or "mortgages" appears in the comprehensive list of tax exemptions in the FCUA. The absence of these terms demonstrates Congressional intent to exclude them. *See Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002) (explaining that under the expression-exclusion rule "expressing one item of [an] associated group or series excludes another left unmentioned.").

Of course, when it is clear that Congress knows how to accomplish a particular result in statutory language *and* Congress has used consistent language in various statutes to achieve that result, the absence of the same language demonstrates that Congress intended a different result. *See Whitfield v. United States*, 543 U.S. 209, 216-17 (2005) (Congress's inclusion of an overt-act requirement in other conspiracy statutes "clearly demonstrate[es] that it knows how to impose such a requirement when it wishes to do so"); *FCC v. NextWave Pers. Commc'n, Inc.*, 537 U.S. 293, 302 (2003) (Congress has created exceptions to legal requirements "clearly and expressly" when it has intended to do so); *Franklin Nat'l Bank v. New York*, 347 U.S. 373, 378 (1954) (finding "no indication that Congress intended to make this phase of national banking subject to local restrictions, as it has done by express language in several other instances").

The foregoing is particularly true in the context of congressionally conferred tax exemptions. *See Oklahoma Tax Comm'n v. United States*, 319 U.S. 598, 606

(1943) ("[t]his Court has repeatedly said that tax exemptions are not granted by implication."). In *California State Board of Equalization v. Sierra Summit, Inc.*, for example, the Court noted that Congress could lawfully confer immunity from state taxation, but it must do so in a clear manner before Courts are permitted to recognize a claimed exemption. 490 U.S. 844, 851-52 (1989); *see also id.* at 854 ("[i]f Congress wished to [exempt specific property from taxation], its intent would have to 'be clearly expressed, not left to be collected or inferred from disputable considerations . . . .'"); *Hale v. Iowa State Bd. of Assessment & Rev.*, 302 U.S. 95, 103 (1937) (federal tax exemptions from state tax obligations must be "strictly construed").

III. Because Congress Expressly Stated Specific Tax Exemptions in the FCUA, it is Unnecessary to Conduct a Constitutional Analysis of Hudson Valley's Status as an Instrumentality of the U.S. Government.

Hudson Valley and its *amici* argue that because federal credit unions are "instrumentalities" of the U.S. government, they are also entitled to independent, constitutional tax immunity under the Supremacy Clause. The ABA and NYBA *amici* leave to the parties to brief the nature of federal credit unions and whether they qualify as "arms of the United States government." But the ABA and NYBA urge the Court to recognize that irrespective of the result of that inquiry, Hudson Valley is not entitled to implied immunity under the Supremacy Clause because Congress expressly defined and limited the tax exemptions granted to federal credit

unions in the FCUA. *See Director of Revenue v. CoBank ACB*, 531 U.S. 316, 321-22 (2001) (constitutional tax immunity is at "issue only when Congress has failed to indicate whether an [entity] is subject to state taxation"). Hudson Valley's detailed forays into law and policy of earlier decades does not and cannot override the Supreme Court's clear holding that courts should not inquire further into constitutional immunity issues when the governing statute is clear about what tax exemptions do and do not exist for a particular entity.

This is the same reason that the Supreme Court decided in *First Agricultural National Bank of Berkshire County v. State Tax Commission*, 392 U.S. 339, 341 (1968) that it was "unnecessary to reach the constitutional question of whether . . . national banks should be considered nontaxable as federal instrumentalities" because express statutory language addressed the state tax at issue in that case. The decision also noted that the Court was "convinced that if a change is to be made in state taxation of national banks, it must come from the Congress, which has established the present limits." *Id.* at 346.

The same is true here. Hudson Valley and its trade association *amici* may pursue legislative amendments from the U.S. Congress to achieve the result they seek through this litigation. However, if and when they do that, other financial institutions and their trade associations – including the undersigned *amici* – will also weigh in on the proposed amendments through the normal legislative and

lobbying channels. This is precisely where and how the present controversy should be resolved – through the legislative process.

CONCLUSION

Congress made the deliberate decision in the FCUA not to exempt credit union "members" or "borrowers" or credit union "loans" or "mortgages" from state taxation. Every other mortgage lender in the State of New York is subject to the MRT when mortgages are recorded for new real estate loans located in the State. This Court should reject the arguments by Hudson Valley that seek an unfair competitive advantage over other lenders in New York and affirm the decision of the Appellate Division to dismiss Hudson Valley's claim.

Dated: May 17, 2012

Respectfully submitted:

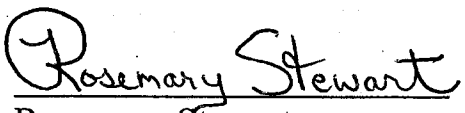

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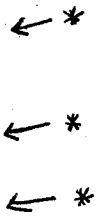
EXHIBIT A
TO AMICUS BRIEF OF THE AMERICAN BANKERS ASSOCIATION AND THE NEW YORK BANKERS ASSOCIATION

Hudson Valley Federal Credit Union's 2010 HMDA Analysis

Income of Applicants	Applicants Received	Loans Originated	Applications Denied
Less than 50% of MSA/MD Median	276	127	115
50-79% of MSA/MD Median	690	418	135
80-99% of MSA/MD Median	523	335	81
100-119% of MSA/MD Median	508	330	82
120% of MSA/MD Median	1,385	906	166
Income not available	20	13	2
Total	3,402	2,129	581

Income of Applicants of Originated Loans	
Less than 50% of MSA/MD Median	6.0%
50-79% of MSA/MD Median	19.6%
80-99% of MSA/MD Median	15.7%
100-119% of MSA/MD Median	15.5%
120% of MSA/MD Median	42.6%
Income not available	0.6%
Total	100.0%



Income of Applicants of Denied Applications	
Less than 50% of MSA/MD Median	19.8%
50-79% of MSA/MD Median	23.2%
80-99% of MSA/MD Median	13.9%
100-119% of MSA/MD Median	14.1%
120% of MSA/MD Median	28.6%
Income not available	0.3%
Total	100.0%

Source:
http://www.ffiec.gov/hmdaadwebreport/pdf/DVD_PDF/2010/Hmda/Agency_5_NCUA/5_0000015802/2010HD_0000015802_5_28740.PDF and
http://www.ffiec.gov/hmdaadwebreport/pdf/DVD_PDF/2010/Hmda/Agency_5_NCUA/5_0000015802/2010HD_0000015802_5_39100.PDF