

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application :  
of :  
JOSEPH A. DE LORENZO : DETERMINATION  
to Review a Determination under Article 11 :  
of the Tax Law with reference to a Mortgage :  
Tax - 1974. :

---

Applicant, Joseph A. DeLorenzo of 101 Park Avenue, New York, New York, has applied for review of a determination under Article 11 of the Tax Law, with reference to an instrument recorded in the office of the Register of New York County on or about May 7, 1974. (File Number 1847).

Upon notice of all interested parties, a formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1976 at 1:15 P.M. Applicant appeared by Linderbaum and Young, Esqs. (Alan H. Young, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq. of counsel).

#### ISSUE

Whether the mortgage recording tax was due on the entire mortgage loan amount on mortgages assigned by applicant Joseph A. DeLorenzo, who also owned the fee simple in the mortgaged properties,

to The Manhattan Savings Bank where mortgage recording tax had been paid on the prior recording of the assigned mortgages and the assignments to applicant provided that those parties intended that the mortgages shall not merge in the fee simple.

FINDINGS OF FACT

1. On or about May 7, 1974, applicant Joseph A. DeLorenzo assigned two mortgages to The Manhattan Savings Bank as security for a mortgage loan of \$325,000.00. At that time, The Manhattan Savings Bank would only accept the assignment on the condition that no mortgage recording tax question remained unresolved. Consequently, applicant drafted two checks to the New York City Register for mortgage recording tax in the sums of \$2,026.50 and \$2,036.00. The latter check was marked "Paid under protest" since applicant contended that no mortgage recording tax was due to the extent of the principal debt on which mortgage recording tax was paid on the prior recording of mortgages on the subject properties.

2. On August 8, 1973, the Troy Savings Bank consolidated and assigned four mortgages to applicant, Joseph A. DeLorenzo. This assignment, recorded in the office of the City Register of New York County in Reel 289 page 190, provided that it was the intention of the parties thereto that the mortgages were not to merge in the fee simple, but were to continue as existing liens on the premises. These consolidated mortgages constituted one of the two mortgages assigned to The Manhattan Savings Bank on or about May 7, 1974.

3. On July 31, 1973, Sylvia Florentine and the surviving trustees under the will of Irving Gorin assigned a mortgage to applicant, Joseph A. DeLorenzo. This assignment, recorded in the office of the City Register of New York County in Reel 287 page 915, provided that the assignment shall not operate as a merger of the assigned mortgage with the fee. This assigned mortgage was the other mortgage assigned to The Manhattan Savings Bank on or about May 7, 1974.

4. Mortgage recording tax had been paid on the sum of the principal debt of approximately \$163,000.00 secured by the prior mortgages.

#### CONCLUSIONS OF LAW

A. That both the mortgages assigned to applicant, Joseph A. DeLorenzo by The Troy Savings Bank and Sylvia Florentine and the surviving trustees under the will of Irving Gorin, did not merge with the fee simple held by applicant since both assignments state the intention that the mortgages were not to merge in or with the fee simple 200 East 64th St. Corp. v Manley 37 N Y 2d 744 which modd. 44 A D 2d11.

B. That the amount of principal debt involved in the recording of the assignment of the two mortgages made by applicant Joseph A. DeLorenzo to The Manhattan Savings Bank to secure a loan of \$325,000.00 should be reduced by the amount of the principal debt of mortgages recorded at prior points in time on which the tax had been paid. City of New York v. Murphy 36 A D 2d 658.


C. That the payment of \$2,036.00 by check "paid under protest" as mortgage recording tax on other than the difference between the principal debt of \$325,000.00 and the principal debt secured by prior mortgages on the subject property on which the tax was paid, was erroneously collected by the recording officer since this amount is not subject to tax under Article 11 of the Tax Law pursuant to the meaning and intent of section 250 thereof.

D. That the application of Joseph A. DeLorenzo is granted and the City Register of New York County is hereby directed, pursuant to section 263 of the Tax Law, to refund to said applicant the sum of \$2,036.00.

DATED: Albany, New York  
December 8, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER