

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
DELMAR REALTY CORP. :
to Review a Determination under Article 11 : DETERMINATION
of the Tax Law with Reference to Mortgages :
Recorded July 27, 1973, and subsequent :
thereto. :

Applicant, Delmar Realty Corp., 219 East 83rd Street, New York, New York, has filed an application to review a determination under Article 11 of the Tax Law with reference to mortgages recorded July 27, 1973, and subsequent thereto.

Upon notice to all interested parties, a formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on January 15, 1974, at 11:05 A.M. Applicant appeared by Fenton & Morse, Esqs., (Lee R. Fenton, Esq. and Seymour L. Morse, Esq. of counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq. of counsel).

ISSUE

In computing the credit provided by section 339ee of the Real Property Law, is the pro rata percentage used a percentage of the

portion of the condominium subject to the construction mortgage or a pro rata percentage of the entire condominium project?

FINDINGS OF FACT

1. On or about December 17, 1971, applicant, Delmar Realty Corp., filed a declaration establishing a plan for condominium ownership of premises 539 Dune Road, Westhampton Beach, Suffolk County, New York. The property consisted of two parcels designated parcel "A" and parcel "B" respectively. It proposed that said condominium would contain 37 units in eight buildings, four of which units were already under construction.

2. After the aforesaid documents were filed, one section of the condominium was constructed by Delmar Realty Corp., the individual units sold, and purchase money mortgages taken back by the corporation.

3. Thereafter in the summer of 1973, applicant, Delmar Realty Corp., needed money to construct a second section consisting of 16 units. It applied to the Dollar Federal Savings and Loan Association of Malverne for a construction loan to complete the condominium development.

4. On March 14, 1973, Delmar Realty Corp. executed and delivered to Dollar Federal Savings and Loan Association of Malverne its mortgage securing the sum of \$355,000.00 covering a parcel of

real property located in the town of Southampton, Suffolk County, New York, known as 539 Dune Road. The said mortgage was duly recorded in the office of the Suffolk County Clerk on March 20, 1973, in Volume 6671 of Mortgages at Page 162 and the full mortgage tax due thereon in the sum of \$2,662.50 was paid. The parcel consisted of Unit Nos. 1, 2, 12, 14 to 20 and 33 to 38 as shown on the aforesaid condominium plan together with an interest as tenant in common in the common elements of the condominium described in the aforesaid declaration of condominium.

5. Thereafter, during the year 1973, 14 of the 16 units covered by the construction mortgage issued by Dollar Federal Savings and Loan Association of Malverne were sold. The units were released from the construction mortgage and new purchase money mortgages were placed thereon by the individual purchasers. One unit was paid for in cash and one unit was used as a superintendent's apartment. The following table indicates the specific details of these transactions.

<u>Unit No.</u>	<u>Mortgagor</u>	<u>% of Common Elements</u>	<u>Original Commit.</u>	<u>Mortgage Tax Paid</u>	<u>Mortgage Issued</u>	<u>Add'l Tax Paid</u>
1	Reilly	2.7943	\$ 23,000	\$ 172.50	\$26,500	\$17.50
2	Casano	2.8326	23,000	172.50	26,500	0.00
12		2.6642	20,000	150.00		
14	Thomasino	2.8556	21,000	157.50	25,000	86.47*
15	Gersh	2.6029	20,000	150.00	24,000	20.00
16	Delmar	2.7943	21,000	157.50	24,000	80.60*
17			19,000	142.50		

<u>Unit No.</u>	<u>Mortgagor</u>	<u>% of Common Elements</u>	<u>Original Commit.</u>	<u>Mortgage Tax Paid</u>	<u>Mortgage Issued</u>	<u>Add'l Tax Paid</u>
18	Delmar	2.4481	\$ 20,000	\$ 150.00	\$21,000	\$67.32*
19	Crane	2.7254	23,000	172.50	25,000	10.00
20	Delmar	2.9168	24,000	180.00	26,000	92.34*
33	Kantrowitz	2.7254	23,000	172.50	24,500	7.50
34	Koenig	2.9168	24,000	180.00	24,000	0.00
35	Delmar	2.6642	23,000	172.50	24,000	84.07*
36	Hertz	2.8556	24,000	180.00	25,500	90.22*
37	Cohen	2.6029	23,000	172.50	26,500	99.45*
38	Jacobson	<u>2.7943</u>	<u>24,000</u>	<u>180.00</u>	26,000	95.60*
	TOTAL	41.1934	\$355,000	\$2,662.50		

* paid under protest

CONCLUSIONS OF LAW

A. That section 339ee of the Real Property Law provides for a credit against the mortgage tax otherwise payable upon a purchase money mortgage where a portion of the proceeds of a construction mortgage are applied to a unit in a condominium. This credit is determined by multiplying the mortgage tax paid upon the construction mortgage by the pro rata percent of the unit buyer's interest in the common elements. In computing this credit, the pro rata percentage required to be used by Delmar Realty Corp. was a percentage of the entire condominium project covered by the declaration and

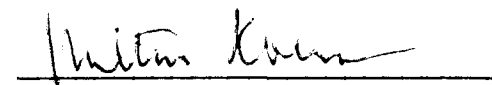
offering plan and not just a percentage of the portion of the condominium project covered by the construction mortgage.

B. That the application of Delmar Realty Corp. is denied.

DATED: Albany, New York
October 8, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER