

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
MARICAM REALTY CORPORATION : DETERMINATION  
to Review a Determination under Article 11 :  
of the Tax Law with Reference to an :  
Instrument Recorded July 10, 1972. :

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Applicant, Maricam Realty Corporation, having its principal place of business at 770 Lexington Avenue, New York, New York, has filed an application to review a determination under Article 11 of the Tax Law with reference to an instrument recorded July 10, 1972.

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, Two World Trade Center, New York, New York, on January 22, 1975, at 1:15 P.M. Applicant appeared by Alter, Lefevre, Raphael, Lowry & Gould, Esqs. (Howard I. Keisman, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq. of counsel).

ISSUE

What portion of a "wrap around" mortgage dated June 28, 1972 and recorded July 10, 1972, from Maricam Realty Corporation, as mortgagor to The Williamsburgh Savings Bank, as mortgagee, was subject to the mortgage recording tax?

FINDINGS OF FACT

1. On December 30, 1971, applicant, Maricam Realty Corporation, executed, acknowledged and delivered three purchase money mortgages to secure payment of the aggregate sum of \$1,120,000.00, covering premises situated in the Town of Islip, County of Suffolk, and State of New York. These three mortgages, each of which was duly recorded in the County Clerk's Office in Suffolk County, respectively were a mortgage from applicant, Maricam Realty Corporation to Louis J. Modica, in the sum of \$224,350.00, recorded December 31, 1971 in Liber 6244, mp. 96; a mortgage from applicant, Maricam Realty Corporation to Vincent Berger, Jr. as Trustee for Philip Giocondi, et al. in the sum of \$671,300.00, recorded December 31, 1971, in Liber 6244, mp. 107; and a mortgage from applicant, Maricam Realty Corporation to Joseph R. DeLizio in the sum of \$224,350.00, recorded December 31, 1971, in Liber 6244, mp. 86. These three mortgages provided that they were together to constitute one coordinate first lien in the aggregate sum of \$1,120,000.00. The mortgage tax due on these mortgages, to wit, the sum of \$8,400.00

was duly paid to the County Clerk's Office, Suffolk County at the time of recording said mortgages. On June 28, 1972, the debt on these mortgages totaled \$1,120,000.00.

2. On or about June 28, 1972, applicant, Maricam Realty Corporation, as mortgagor executed, acknowledged and delivered a mortgage to The Williamsburgh Savings Bank as mortgagee, mortgaging the premises prescribed in paragraph "1". The mortgage provided that it secured an indebtedness of \$1,670,000.00. It further provided that it was a "wrap around" mortgage bearing the debt service of the preexisting underlying mortgages and notes referred to in paragraph "1" above and that The Williamsburgh Savings Bank, as mortgagee agreed to pay the debt service of the aforesaid underlying mortgages. It specifically provided that:

"25. (a) This Mortgage is subject and subordinate to three first purchase money mortgages, made equal and coordinate liens by their terms, executed by the Mortgagor herein to (1) JOSEPH R. DELIZIO, (2) LOUIS J. MODICA, and (3) VINCENT J. BERGER, JR., as Trustee for PHILIP GIOCONDI, DOMINICK GUGLIELMO, AUGUST ROSANO, ROMEO ROSANO and PHILIP SCIUBBA, all executed on the 30th day of December, 1971, and recorded in the Office of the Clerk of the County of Suffolk on December 31, 1971, in Liber 6244 of Mortgages at pages 86, 96 and 107, respectively. The three said loans have an aggregate outstanding balance of \$1,120,000.00. The three said equal and coordinate first purchase money mortgages cover the entire premises mortgaged herein, and shall be known collectively herein as the "Prior Mortgage".

(b) A portion of the money loaned by this Mortgagee to Mortgagor, which loan is secured hereby, shall be applied

by Mortgagee to the payment of the unpaid principal balance of the Prior Mortgage as such payments shall fall due under the provisions of the Prior Mortgage and the Note secured thereby.

(c) Mortgagee shall retain the amounts so required to pay the said Prior Mortgage and shall apply such amounts to the payment of the principal installments when due, and of the entire balance of principal at a time or times satisfactory to Mortgagee but no later than the respective due dates thereof.

(d) Mortgagor assumes and agrees to comply with all of the terms and conditions of the Prior Mortgage so that it shall not go into default. Any default under the said Prior Mortgage by Mortgagor shall constitute a default hereunder, and shall entitle Mortgagee to exercise any and all rights and remedies given hereunder.

(e) Mortgagee assumes all payments of principal and interest thereon only due and payable under the Prior Mortgage, but does not assume any other obligations thereunder. This assumption is expressly not intended to benefit or confer rights upon the Prior Mortgagee or upon any party or parties other than the parties hereto. So long as Mortgagee is not in default in making payments under the Prior Mortgage as are hereby assumed, Mortgagor waives any right to make any payments of principal or interest thereunder.

(f) The consideration for Mortgagee undertaking the obligations and assumptions set forth herein is included within and is part of the interest rate in the Note secured hereby to be paid by Mortgagor and Mortgagor expressly acknowledges such inclusion without any specific allocation of such interest between consideration for such assumption and undertaking and consideration for the loan and use of money."

3. The mortgage, dated June 28, 1972, made by applicant, Maricam Realty Corporation, as mortgagor, to The Williamsburgh Savings Bank, as mortgagee, was presented for recording to the County Clerk of Suffolk County, and a check in the amount of

\$4,125.00 was tendered as payment of the mortgage tax for the indebtedness of \$550,000.00 referred to in said mortgage together with an affidavit by an officer of Maricam Realty Corporation requesting that the mortgage tax tendered be accepted.

4. The County Clerk of Suffolk County refused to accept the aforesaid mortgage for recording unless a mortgage tax on the face amount of the mortgage, \$1,670,000.00, was paid, which tax amounted to \$12,525.00.

5. In compliance with the recording officer's ruling and under protest, applicant, Maricam Realty Corporation, tendered a check in the amount of \$12,525.00 as payment of the mortgage tax on the indebtedness of \$1,670,000.00, which check was endorsed "Paid Under Protest".

6. Upon payment of \$12,525.00 demanded by the County Clerk of Suffolk County, the mortgage was recorded in the office of said county clerk in Volume 6409, at Page 296, on July 10, 1972.

7. On July 28, 1972, applicant, Maricam Realty Corporation, filed a claim for refund of the sum of \$8,400.00 and demanded a hearing.

#### CONCLUSIONS OF LAW

A. That the mortgage recording tax imposed by section 253 of the Tax Law is to be measured by the total debt secured. The total debt secured by the mortgage dated June 28, 1972, from

applicant, Maricam Realty Corporation, as mortgagor to The Williamsburgh Savings Bank, as mortgagee, was \$1,670,000.00, the consideration for which was \$550,000.00 advanced by The Williamsburgh Savings Bank to applicant, Maricam Realty Corporation, at the time of the execution of the mortgage and \$1,120,000.00 by The Williamsburgh Savings Bank agreeing to make the payments due from applicant, Maricam Realty Corporation, to Louis J. Modica pursuant to a mortgage and note between said parties dated December 30, 1971, to Vincent Berger, Jr. as Trustee for Philip Giocondi, et al. pursuant to a mortgage and note between said parties dated December 30, 1971, and to Joseph R. DeLizio pursuant to a mortgage and note between said parties dated December 30, 1971. Furthermore, the debts from applicant, Maricam Realty Corporation to The Williamsburgh Savings Bank and to Louis J. Modica, Vincent Berger, Jr. as Trustee for Philip Giocondi, et al. and Joseph R. DeLizio were separate and distinct. Each debt ran to a different party and was secured by a separate mortgage which might be foreclosed independently of the other. Therefore, a mortgage recording tax in the sum of \$12,525.00 was due upon the sum of \$1,670,000.00, which latter sum constituted the total debt secured by the mortgage from applicant, Maricam Realty

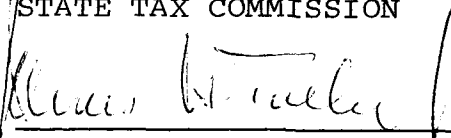
Corporation, to The Williamsburgh Savings Bank, unless said mortgage was otherwise exempt pursuant to section 255 of the Tax Law. Application of First Fiscal Fund Corp.. Decision of the State Tax Commission dated March 11, 1975.


B. That the mortgage dated June 28, 1972, from applicant, Maricam Realty Corporation, as mortgagor to The Williamsburgh Savings Bank, as mortgagee, did not come within the exemption provided by section 255 of the Tax Law since said mortgage was not recorded to correct or perfect the mortgages dated December 30, 1971, from applicant, Maricam Realty Corporation, as mortgagor to Louis J. Modica, Vincent Berger, Jr., as Trustee for Philip Giocondi, et al. and Joseph R. DeLizio, as mortgagees, or pursuant to some provision or covenant therein or to impose an additional mortgage on property other than that covered by said mortgages as additional security for the original debts. Application of First Fiscal Fund Corp.. Decision of the State Tax Commission dated March 11, 1975.

C. That the application of Maricam Realty Corporation is denied.

DATED: Albany, New York  
December 11, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER