

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
COSMOPOLITAN BROADCASTING CORPORATION : AFFIDAVIT OF MAILING
to Review a Determination under Article 11 :
of the Tax Law with Reference to an :
Instrument Recorded 1976 :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by certified mail upon Cosmopolitan Broadcasting Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

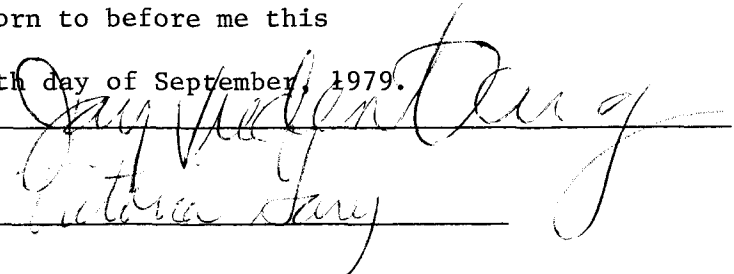
Cosmopolitan Broadcasting Corp.
80 Riverside Dr.
New York, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this

28th day of September, 1979.



Notary Public

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
COSMOPOLITAN BROADCASTING CORPORATION : AFFIDAVIT OF MAILING
to Review a Determination under Article 11 :
of the Tax Law with Reference to an :
Instrument Recorded 1976 :

State of New York

County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by certified mail upon Gilbert Siegal, Citicorp Leasing, Inc., Mr. Adrian P. Burke, Mr. Matthew R. Dwyer and Mr. Arthur Maxwell the representatives of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gilbert Siegal
Garrel, Siegal & Katz, Esqs
22 E. 40th St.
New York, NY 10016

Mr. Matthew R. Dwyer
Register - New York County
31 Chambers Street
New York, New York 10007

Mr. Arthur Maxwell
Associate Mortgage & Land Tax Examiner
State Campus
Building 9, Room 208
Albany, New York 12227

Citicorp Leasing, Inc.
399 Park Avenue
New York, New York

Mr. Adrian P. Burke
New York City Corporation Counsel
Municipal Building
New York, New York 10007

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this

28th day of September, 1979.

James McDonough
Victoria Gary

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Cosmopolitan Broadcasting Corp.
80 Riverside Dr.
New York, NY


Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 251 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

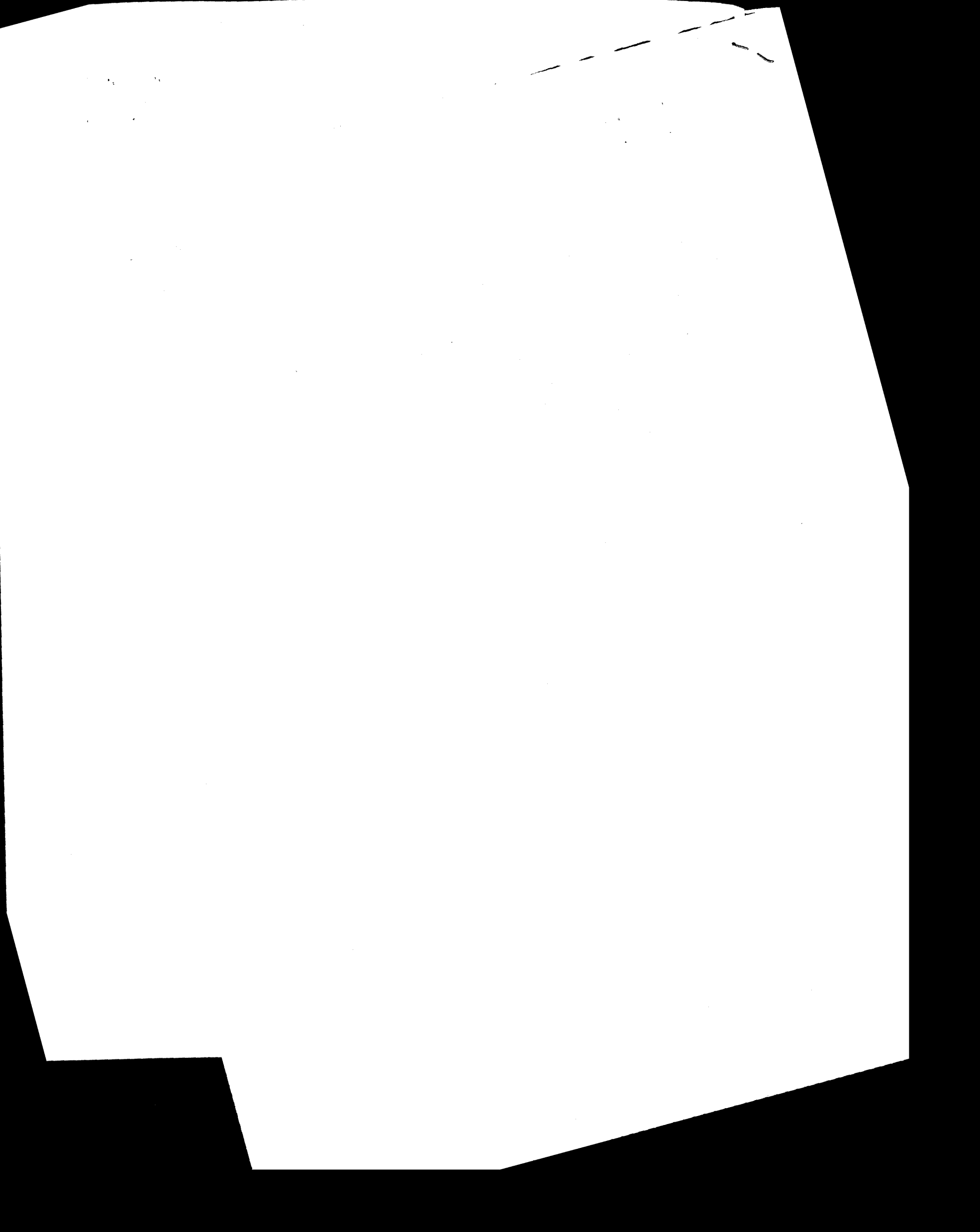
Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



cc: Petitioner's Representative
Gilbert Siegal
Garrel, Siegal & Katz, Esqs.
22 E. 40th St.
New York, NY 10016
Taxing Bureau's Representative

See Page 2 for additional representatives.



JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Cosmopolitan Broadcasting Corp.
80 Riverside Dr.
New York, NY

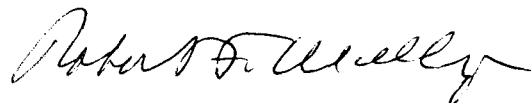
Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 251 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



cc: Petitioner's Representative
Gilbert Siegal
Garrel, Siegal & Katz, Esqs.
22 E. 40th St.
New York, NY 10016
Taxing Bureau's Representative

See Page 2 for additional representatives.

Page 2
Cosmopolitan Broadcasting Corp.

Additional Representatives of Petitioner:

Citicorp Leasing, Inc.
399 Park Avenue
New York, New York

Mr. Adrian P. Burke
New York City Corporation Counsel
Municipal Building
New York, New York 10007

Mr. Matthew R. Dwyer
Register - New York County
31 Chambers Street
New York, New York 10007

Mr. Arthur Maxwell
Associate Mortgage & Land Tax Examiner
State Campus
Building 9, Room 208
Albany, New York 12227

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
COSMOPOLITAN BROADCASTING CORPORATION : DETERMINATION
to Review a Determination Under Article 11 of :
the Tax Law With Reference to an Instrument :
Recorded in the Office of the Register of the :
City of New York in and for the County of :
New York on April 13, 1976. :

Applicant, Cosmopolitan Broadcasting Corporation, 80 Riverside Drive, New York, New York, filed an application to review a determination under Article 11 of the Tax Law, with reference to an instrument recorded in the office of the Register of the City of New York in and for the County of New York on April 13, 1976 (File No. 15872).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1978 at 10:45 A.M.

Applicant appeared by Garrell, Siegal & Katz, Esqs. (Gilbert Siegal, Esq., of counsel). The Register of the City of New York appeared by Adrian P. Burke, Esq., New York City Corporation Counsel (Arnold Fox, Esq., Assistant Corporation Counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether a mortgage tax is due on the amount of the indebtedness recited in the mortgage instrument offered for recordation, where the mortgage secures the payment of a lesser indebtedness, plus interest thereon, the total amount of which is set forth in a certain note therefor.

FINDINGS OF FACT

1. Applicant, Cosmopolitan Broadcasting Corporation, is a New Jersey corporation duly authorized to conduct business in the State of New York. It operates

Radio Station WHBI, which is licensed by the Federal Communication Commission to Broadcast in the northern New Jersey/New York City metropolitan area. Through its subsidiaries, it is also engaged in the operation of an aircraft and in real estate. In April of 1976, applicant was the owner of real property located at 80 Riverside Drive, New York, New York.

2. In the same month and year, Seaplane Shuttle Transport Inc., a subsidiary of Cosmopolitan, entered into a contract with DeHaviland of Canada (an aircraft company located in Toronto, Canada) for the purchase of a seaplane. Seaplane Shuttle assigned the contract to Cosmopolitan and the latter then borrowed \$571,888.80 from Citicorp at 12% interest, payable at the rate of \$10,391.35 per month for 84 months. Cosmopolitan then issued a note payable to Citicorp in the amount of \$872,873.40. Cosmopolitan also executed a chattel mortgage on the seaplane to Citicorp. The former then leased the seaplane to Seaplane Shuttle. Cosmopolitan assigned the lease to Citicorp and guaranteed the Seaplane Shuttle payments on the lease. Cosmopolitan then gave Citicorp a mortgage on the above-mentioned note. Cosmopolitan purchased the plane from DeHaviland and turned it over to Seaplane Shuttle. The money (\$573,235.08) was paid directly by Citicorp to DeHaviland.

3. On April 12, 1976, Cosmopolitan Broadcasting Corporation executed its promissory note to Citicorp Leasing, Inc. in the amount of \$872,873.40 in 84 equal and consecutive monthly payments of \$10,391.35, each commencing May 10, 1976 (as indicated above). To secure the payment of this note, applicant, Cosmopolitan (as mortgagor), executed an instrument termed a "mortgage" in favor of Citicorp Leasing, Inc. (as mortgagee), covering real property located at 80 Riverside Drive, New York, New York, subject to certain other mortgages as stated therein. The mortgage recited, in part, that it was given

...to secure the payment of an indebtedness in the sum of Eight Hundred Seventy Two Thousand Eight Hundred Seventy Three and Forty Hundreths (\$872,873.40) Dollars, lawful money of the United States to be paid according to a certain note bearing even date herewith.

4. When applicant proffered the aforementioned mortgage for recording to the Recording Officer, the latter demanded payment of recording tax of \$10,911.25 on \$872,873.40, instead of \$7,148.75 mortgage tax on \$571,888.80. Applicant paid the mortgage tax of \$10,911.25 which was demanded, under protest. On August 2, 1976, applicant filed an application for refund of mortgage tax in the amount of \$3,762.50, contending that the principal amount of indebtedness was \$571,888.80, and that the amount of \$300,984.60 represented interest over the entire term of the mortgage note.

5. Citicorp Leasing, Inc. refused to give applicant an affidavit to the effect that the principal indebtedness covered by the real property mortgage was \$571,888.80, for the purpose of amending the face amount stated in the mortgage filed with the Recording Officer.

CONCLUSIONS OF LAW

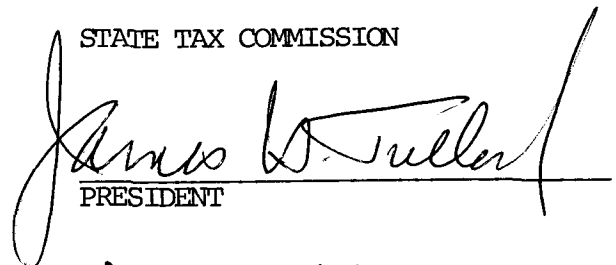
A. That the principal indebtedness secured by the real property mortgage was \$872,873.40 (the same amount as stated in the note secured by this mortgage) and not \$571,888.80. The mortgagor is bound by the terms of the mortgage within the intent and meaning of section 253 of the Tax Law.

B. That the application of Cosmopolitan Broadcasting Corporation for a refund of mortgage tax is denied.

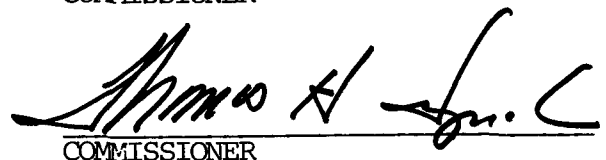
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER