

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Titan Group, Inc. :

AFFIDAVIT OF MAILING

for Review of a Determination under Article 11 of :
the Tax Law, Tax on Mortgages, with Reference to an :
Instrument Recorded on March 28, 1979 :

State of New York
County of Albany

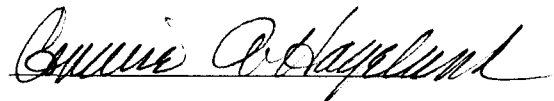
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Titan Group, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Titan Group, Inc.
East 81, State Hwy. 4
Paramus, NJ 07652

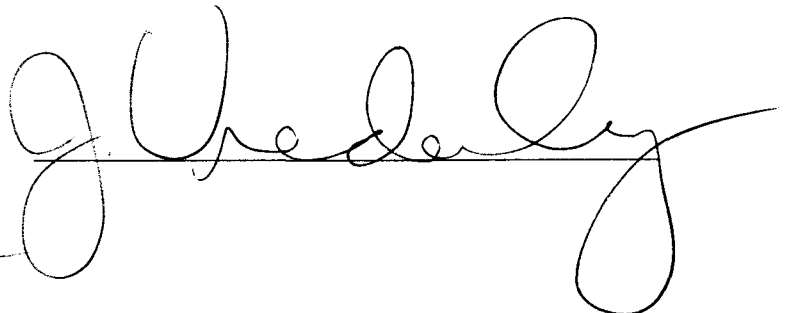
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
3rd day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Titan Group, Inc. :
AFFIDAVIT OF MAILING
for Review of a Determination under Article 11 of :
the Tax Law, Tax on Mortgages, with Reference to :
an Instrument Recorded on March 28, 1979 :

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 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Jack S. Ingber the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack S. Ingber
Ingber & Lagarenne
230 Broadway, Box 111
Monticello, NY 12701

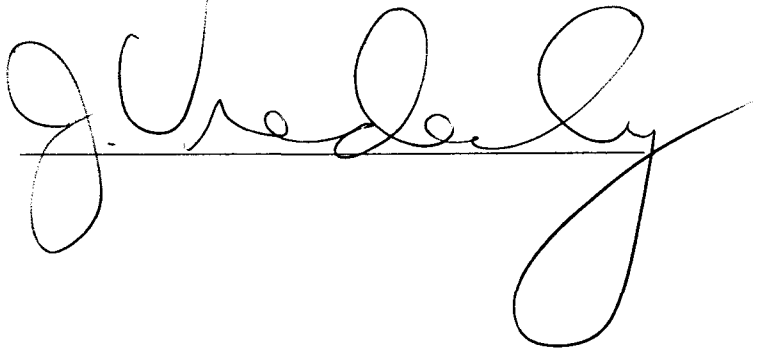
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
3rd day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 3, 1982

Titan Group, Inc.
East 81, State Hwy. 4
Paramus, NJ 07652

Gentlemen:

Please take notice of the Decision 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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jack S. Ingber
Ingber & Lagarenne
230 Broadway, Box 111
Monticello, NY 12701
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
TITAN GROUP, INC. : DECISION
for Review of a Determination under Article 11 :
of the Tax Law, Tax on Mortgages, with Reference :
to an Instrument Recorded on March 28, 1979 :

Petitioner, Titan Group, Inc., East 81, State Highway 4, Paramus, New Jersey 07652, filed a petition for review of a determination under Article 11 of the Tax Law, tax on mortgages, with reference to an instrument recorded on March 28, 1979 (File No. 29480).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 17, 1981 at 10:45 A.M. Petitioner appeared by Ingber, Lagarenne, Meltzer & DuBois (Jack S. Ingber, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the principal indebtedness secured, or which by any contingency may be secured, by the subject mortgage was determinable from the terms of the mortgage or was established by an affidavit presented at the time of recording.

II. Whether the Audit Division properly allocated the property subject to the mortgage by the ratio of the value of the property within New York State to the total value of petitioner's assets.

FINDINGS OF FACT

1. On March 28, 1979 there was recorded in the Sullivan County Clerk's office a mortgage between petitioner, Titan Group, Inc., mortgagor, and Safeco

Insurance Company of America ("Safeco"), mortgagee, to secure an indebtedness of \$7,324,993.88 "...in accordance with the terms of an Amended Term Note dated March 16, 1979 as to principle and interest in accordance with the terms thereof, and any and all other indebtedness or obligations from Mortgagor to Mortgagee in accordance with the provisions of a certain Term Loan Agreement dated December 4, 1978 and Amendment No. 1 thereto dated March 16, 1979." In conjunction with the filing of the mortgage, petitioner filed an affidavit sworn to by Robert James Frankel, Chairman of the Board and Chief Executive Officer of petitioner, which stated, in part, that petitioner gave a mortgage to Safeco in the amount of \$7,324,993.88 which was secured by all of petitioner's assets, wherever located. The affidavit also stated that part of the assets pledged as security consisted of real property located in the Town of Fremont, Sullivan County and that on June 1, 1978 this property was appraised at \$4,588,000.00. Further, the affidavit stated that the book value of the assets covered by the lien located outside of New York State was \$56,425,000.00.

2. At the time the foregoing mortgage and affidavit were recorded, petitioner's total mortgage recording tax liability was determined to be \$4,120.00. Petitioner paid this amount at the time the mortgage and affidavit were recorded. The recording officer did not raise a question as to whether the mortgage secured an indeterminate amount at the time of recording. Although the recording officer could have requested additional documents pertaining to the mortgage, he did not do so.

3. Thereafter, the recording officer sent a copy of the foregoing affidavit to the State Tax Commission. Upon receipt of the affidavit, the Audit Division requested copies of the recorded instruments and any other related documents.

Subsequently, petitioner provided a copy of the first amendment of the term loan agreement referred to in the mortgage.

4. The first amendment of the term loan agreement contained a preliminary statement which provided, in substance, that Safeco would accept a certain number of shares of petitioner's preferred stock in payment of the balance due on two prior term notes. This exchange reduced petitioner's outstanding indebtedness by \$15,000,000.00. The agreement further provided that following its execution there would currently be outstanding term notes from petitioner to Safeco in the amount of \$7,324,993.88. In addition, the agreement stated that:

"Company and Guarantors have requested Lender to modify the Term Loan Agreement and to extend certain other accommodations to Company and Guarantors. Those accommodations include, but are not limited to the following:

- A. The making or guaranteeing of further loans to Company or Guarantors from time to time.
- B. The issuing of Surety Bonds by Lender or Lender's Affiliates (as defined in the Term Loan Agreement) to Company or Guarantors from time to time.
- C. The recasting of the moneys due under and the modification of certain terms and conditions of the Credit Agreement and Pledge Agreement."

Section 1.01 of the agreement also stated, in part "[a]ny additional borrowing by the Company from the Lender shall be evidenced by additional Amended Term Notes substantially in the form annexed hereto and made a part hereof as Exhibit AA."

5. In a letter dated February 28, 1980 petitioner was advised by the Audit Division that the maximum amount of indebtedness secured by the mortgage could not be determined from the terms of the instruments and therefore the

mortgage was taxable upon the total value of the properties covered by the mortgage multiplied by the ratio that the value of the tangible New York property covered by the mortgage bears to the total value of all property covered by the mortgage.

6. This letter determined petitioner's liability as follows:

Net value of property without the state	\$ 53,592,000.00
Net value of property within the state	4,588,000.00
Total Net Value	\$ 58,180,000.00

Amount secured by Mortgage	Indeterminate
Portion taxable	\$ 4,588,000.00
Tax	34,410.00
Tax deposited	4,120.00
Balance Due	\$ 30,290.00

7. A sentence in the last paragraph of this letter requested that petitioner "[a]dvise the Commission whether the above-suggested calculations are satisfactory or whether the mortgagor wishes to file other or further proofs." The record does not indicate that petitioner provided additional proof pertaining to the value of the mortgage.

8. The Audit Division's computations were premised upon the full value of petitioner's assets in Sullivan County.

9. The mortgage and affidavit were prepared in New Jersey.

CONCLUSIONS OF LAW

A. That neither the terms of the mortgage nor the affidavit establish the principal indebtedness which may be secured under any contingency by the mortgage (see Findings of Fact "1" and "4").

B. That section 256 of the Tax Law permits, but does not mandate, the recording officer to require additional proof of the value of the property covered by the mortgage. Section 256 of the Tax Law further provides that the determination of the recording officer and copies of proofs which are the

basis for computing the tax on the mortgage are to be sent to the State Tax Commission and subject to review by the State Tax Commission. The foregoing provisions of section 256 of the Tax Law were complied with.

C. That since it is not possible to determine from the terms of the mortgage the principal indebtedness secured or which by any contingency may be secured by the mortgage and since the affidavit filed with the mortgage does not set forth the maximum amount secured or which by any contingency may be secured by the mortgage, the Audit Division properly determined that the mortgage was taxable pursuant to section 253 of the Tax Law upon the value of the property covered by the mortgage (Tax Law §256).

D. That Tax Law §260 provides, in part:

"When the real property covered by a mortgage is partly within the state and partly without the state it shall be the duty of the tax commission to determine what portion of the mortgage or of advancements thereon shall be taxable under this article. Such determination shall be made in the following manner:

First: Determine the respective values of the property within and without the state, and deduct therefrom the amount of any prior existing mortgage liens, excepting such liens as are to be replaced by prior advancements and the advancement under consideration. Second: Find the ratio that the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property. Third: Make the determination of the portion of the mortgage or of the advancements thereon which shall be taxable under this article by applying the ratio so found. If a mortgage covering property partly within and partly without the state is presented for record before such determination has been made, or at the time when an advance is made on a corporate trust mortgage or on a prior advance mortgage, there may be presented to the recording officer a statement in duplicate verified by the mortgagor or an officer or duly authorized agent of the mortgagor, in which shall be specified the net value of the property within the state and the net value of the property without the state covered by such mortgage. One of such statements shall be filed by the recording officer and the other shall be forthwith transmitted by him to the state tax commission.

The tax payable under this article before the determination by the tax commission shall be computed upon such portion of the principal indebtedness secured by the mortgage, or of the sum advanced thereon, as the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property as set forth in such statement. The tax commission shall on receipt of the statement from the recording officer and on not less than ten days' notice served personally or by mail upon the mortgagor, the mortgagee and the state comptroller, proceed to make the required determination."

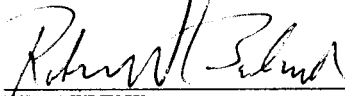
E. That upon the record presented, the Audit Division properly applied the ratio required by section 260 of the Tax Law. (In this case the mortgage secured an indeterminate sum. Therefore, the application of section 260 of the Tax Law resulted in computing the tax on the basis of the New York property secured by the mortgage.)

F. That the petition of Titan Group, Inc. is hereby denied.

DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER