

In the Matter of the Petition

of  
MCA, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Corporation Franchise :  
Taxes under Article ~~(9)~~ 9-A of the :  
Tax Law for the ~~XXXXXX~~ Period ~~(9)~~ Ending: :  
December 31, 1973.

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
~~she~~ she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 3rd day of May , 19 78, ~~she~~ she served the within  
Notice of Decision by (certified) mail upon MCA, Inc.

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: MCA, Inc.  
100 Universal City Plaza  
Universal City, California 91608

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 May , 1978

*[Signature]*

*John Huhn*

In the Matter of the Petition

of  
MCA, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Corporation Franchise :  
Taxes under Article (x) 9-A of the :  
Tax Law for the ~~XXXXXX~~ Period (x) Ending :  
December 31, 1973.

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 3rd day of May , 1978, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Richard C. Schiller

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Richard C. Schiller, Esq.

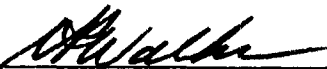
as follows: Tax Attorney  
MCA, Inc.  
100 Universal City Plaza

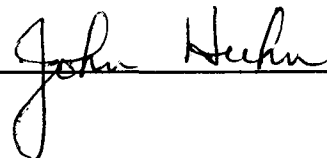
and by depositing ~~same enclosed in a~~ <sup>Universal City, California 91608</sup> postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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 May , 1978

  
\_\_\_\_\_

  
\_\_\_\_\_



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

May 3, 1978

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

**MCA, Inc.**  
**100 Universal City Plaza**  
**Universal City, California 91608**

**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 **1090** 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,

**Aloysius J. Nendza**  
**Assistant Director**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions :  
of :  
MCA, INC. : DECISION  
for Redetermination of a Deficiency and :  
for Refund of Corporation Franchise Tax :  
under Article 9-A of the Tax Law for the :  
Period Ending December 31, 1973. :  
:

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MCA, Inc., 100 Universal City Plaza, Universal City, California 91608, filed petitions for redetermination of a deficiency and for refund of corporation franchise tax under Article 9-A of the Tax Law for the period ending December 31, 1973 (File No. 13974).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York 12227, on June 30, 1977. The petitioner appeared by Richard C. Schiller, Esq. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUES

I. Whether or not petitioner is entitled to an investment tax credit on negatives not having a situs within the State of New York.

II. Whether or not only the cost of the prints from said negatives should be included in the property factor for allocation purposes.

FINDINGS OF FACT

1. On May 19, 1975, petitioner filed a claim for credit or refund for the period ending December 31, 1973 in the amount of \$24,477.00, which claim was denied. Petitioner timely filed a petition for a hearing to review said denial. The petitioner contends that in determining its business allocation percentage for the period ending December 31, 1973, it erroneously included in the property factor for the State of New York, costs relating to motion picture and television negatives which were not located in the State of New York.

2. On September 5, 1975, the Corporation Tax Bureau issued a Notice of Deficiency for the calendar year 1973 against petitioner in the amount of \$110,105.75, plus interest of \$11,105.75, for a total of \$121,620.75, less a credit applied from 1970 of \$4,176.12, leaving a balance due of \$117,444.63. Petitioner timely filed a petition for a hearing to review said Notice of Deficiency. The deficiency was based on the disallowance of the investment tax credit claimed by petitioner under section 210-12(b) of the Tax Law, on the ground that the situs of the property was not located in the State of New York.

3. Petitioner, MCA, Inc., was incorporated under the laws of the State of Delaware on November 10, 1958; it began doing business in the State of New York on January 1, 1966. Executive and fiscal offices are maintained at Universal City, California. MCA, Inc.

also shares leased, executive office facilities at 445 Park Avenue, New York, New York, with its subsidiaries. The activities of MCA, Inc. and some of its subsidiaries included (among other things) the production, distribution and sale of rental film for theatrical and television purposes.

4. Costs incurred in the production of film negatives represented the specified tangible personal property on which the claim for investment tax credit was based. These costs included raw film stock, labor, talent fees, overhead, amortization, depreciation and other expenses related to production. These finished negatives (all of which are located in California) then become the tangible personal property used in the production of prints for exhibition. For purposes of computing the property factor, a portion of these negative costs had been assigned by petitioner to the prints distributed in New York and elsewhere for their showing in theaters and on television.

5. Petitioner contends that since production and/or negative costs had been apportioned to New York, it was entitled to an investment tax credit. The petitioner further contends (in the alternative) that only the cost of the prints should be included in the property factor for allocation purposes, rather than the amounts reported on the original return which was later amended.

CONCLUSIONS OF LAW

A. That petitioner is not entitled to an investment tax credit with respect to the negatives located solely within the State of California, since said negatives do not have a situs within the State of New York as required by section 210, subdivision 12, subsection (b) of the Tax Law.

B. That petitioner had originally and properly allocated the inventory of prints located in New York within the intent and meaning of section 210, subdivisions 12(a) and 8 of the Tax Law.

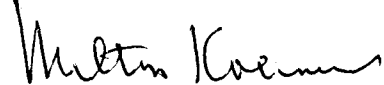
C. That the claim for credit or refund of MCA, Inc. for the year 1973 be and the same is hereby denied.

D. That the petition of MCA, Inc. for redetermination of a deficiency for the year 1973 be and the same is hereby denied.

DATED: Albany, New York  
May 3, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER