

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DIAMON-DEB, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Corporation Franchise Tax :
Taxes under Article (x) 9-A of the :
Tax Law for the Year (xxxxxx) 1968.:

State of New York
County of Albany

John Huhn , 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 14th day of February , 1979 , he served the within
Notice of Decision by (certified) mail upon Nathan A. Greenberg, CPA
(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Nathan A. Greenberg, CPA
Richard A. Eisner & Company
380 Madison Avenue
New York, NY 10017

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

14th day of February , 1979.

Maurice J. Papneou

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Diamon-Deb, Inc.
Pierces Road
Newburgh, NY 12550

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the United States Postal Service within the State of New York.

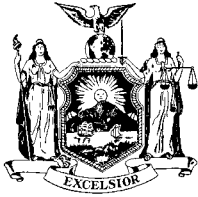
That deponent further says that the said addressee is the ~~(representative of)~~
~~(xxxx)~~ petitioner herein and that the address set forth on said wrapper is the
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Sworn to before me this

14th day of February , 1979

Marilyn J. Papineau

John Huhn



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

February 14, 1979

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

Diamon-Deb, Inc.
Pierces Road
Newburgh, NY 12550

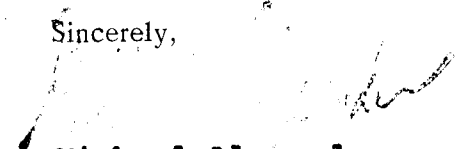
Gentlemen:

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(x) **215** 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 **90 days** 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,


Michael Alexander
Supervising Tax
Hearing Officer

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DIAMON-DEB, INC. :
for Redetermination of a Deficiency or :
for Refund of Corporation Franchise Tax :
under Article 9-A of the Tax Law for the :
Year 1968. :

DECISION

Petitioner, Diamon-Deb, Inc., Pierces Road, Newburgh, New York 12550, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the year 1968 (File No. 14398).

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 January 19, 1978 at 10:45 A.M. Petitioner appeared by Nathan A. Greenberg, CPA. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether the granting of an application for an extension to file petitioner's annual report constitutes an extension of the statutory time period to file a claim for credit or refund of an overpayment attributable to a net operating loss carryback for more than 3 years from the time the return was due for the taxable year of the loss.

II. Whether the claim for refund or credit was timely filed within two years from the ninetieth (90th) day after the final Federal determination, with respect to the taxable year to which the net operating loss is being carried back, where the net operating loss is attributable to the Federal change or correction.

FINDINGS OF FACT

1. On March 14, 1972, petitioner, Diamon-Deb, Inc., a corporation with offices at Pierces Road, Newburgh, New York, filed an application for an extension for filing a tax report for the calendar year ending December 31, 1971, which application was granted until September 15, 1972.

2. Petitioner filed its tax report for the tax period ending December 31, 1971 within the time granted pursuant to the aforementioned extension.

3. As a result of a change or correction of Federal income of its parent corporation for the year ended December 31, 1971, petitioner sustained a net operating loss for 1971. A notice of change of Federal taxable income for 1971 was filed by petitioner within ninety days after August 31, 1973, the date of the final Federal determination.

4. On September 9, 1975, petitioner filed a claim for credit or refund of overpayment attributable to net operating loss carry-back to 1968 for \$1,510.00, based on the 1971 net operating loss.

5. On October 9, 1975, the Corporation Tax Bureau denied petitioner's claim for refund for 1968, on the ground that it was not filed within three years from the date the return for 1971 was due, viz., March 15, 1975. On January 7, 1976, petitioner filed a petition for redetermination of the denial of said refund.

CONCLUSIONS OF LAW

A. That section 211.1 provides that a corporation reporting on a calendar year basis shall annually on or before March 15th, transmit its report to the Tax Commission and that an automatic extension of three (3) months for the filing of its annual report shall be allowed a taxpayer if, within the time prescribed (that is, by March 15th), such taxpayer files with the Tax Commission an application for such extension, paying on or before the date of such filing the amount properly estimated as its tax. Said section also provides that the Tax Commission may grant a reasonable extension of time for filing reports whenever good cause exists.

B. That the granting of an application for an automatic extension and/or an extension for good cause does not constitute an agreement to extend the period of limitations within which to file a claim for refund or credit of an overpayment attributable to a net operating loss carryback, within the intent and meaning of section 1087(d) of the Tax Law.

C. That the granting of the automatic extension and/or an extension for good cause does not extend the period within which to file a claim for refund or credit (with respect to the overpayment attributable to a net operating loss) to more than three (3) years from the time the return was due for the taxable year of the loss.

D. That the claim for refund or credit was timely filed within two (2) years from the ninetieth day after the final Federal determination with respect to the taxable year for which the net operating loss was required to be filed with the Tax Commission, within the intent and meaning of section 1087(c) of the Tax Law.

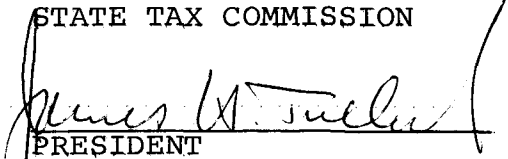
E. That the petition of Diamon-Deb, Inc. is granted.

F. That the Corporation Tax Bureau is hereby directed to grant petitioner the refund claimed on the carryback net operating loss for 1968.


DATED: Albany, New York

February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

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for Redetermination of a Deficiency or : DECISION
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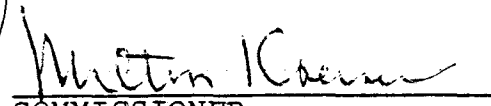
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