STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
United Artists Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Corporation Franchise Tax :
under Article 9A of the Tax Law
for the Years 1966 - 1968. :

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 16th day of November, 1979, he served the within notice of Decision by certified mail upon United Artists Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

United Artists Corp.
729 7th Ave.
New York, NY 10019

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
16th day of November, 1979.

Jeanne Knapp

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
United Artists Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Corporation Franchise Tax :
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for the Years 1966 - 1968. :

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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Melvin J. Jacobowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Melvin J. Jacobowitz
Phillips, Nizer, Benjamin, Krim & Ballon
40 W. 57th St.
New York, NY 10019

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
16th day of November, 1979.

Joanne Knapp

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

November 16, 1979

United Artists Corp.
729 7th Ave.
New York, NY 10019

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) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Melvin J. Jacobowitz
Phillips, Nizer, Benjamin, Krim & Ballon
40 W. 57th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
UNITED ARTISTS CORP.	:	DECISION
for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Years 1966, 1967 and 1968	:	

Petitioner, United Artist Corp., 729 Seventh Avenue, New York, New York 10019, filed petitions for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1966, 1967 and 1968.

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 30, 1977 at 9:20 A.M. Petitioner appeared by Phillips, Nizer, Benjamin, Krim & Ballon, Esqs. (Neil C. Kleinhandler, Esq., of counsel). The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the phrase "from the time the return was due" in section 1087(d) of the Tax Law means the due date, without regard to any extension of time or the due date, including such an extension of time as may be granted by the Corporation Tax Bureau. (If the phrase "from the time the return was due" means the due date without regard to any extension of time, then the petition must be denied. If the phrase "from the time the return was due" means the due date including such an extension of time as may be granted by the Corporation Tax Bureau, then the petition must be granted.)

FINDINGS OF FACT

1. Petitioner, United Artists Corporation (a Delaware corporation), with an office at 729 Seventh Avenue, New York, New York, received an extension of time for filing its New York State Corporation Franchise Tax Report (Form CT-3) for the tax years 1969 and 1970, extending the time to file said returns until October 15, 1970 and October 15, 1971.

2. Petitioner filed its tax returns for 1969 and 1970 on or before October 15, 1970 and October 15, 1971, respectively.

3. As a result of net operating losses for 1969 and 1970, petitioner filed claims for refund for 1966, 1967 and 1968, predicated on the carry-back of such net operating losses.

4. Statements of audit changes and notices of deficiency were issued against petitioner for 1966, 1967 and 1968, assessing a total of $206,811.00, including the deficiency and interest.

5. Petitioner timely filed petitions for redetermination of corporation franchise tax due under Article 9-A of the Tax Law for 1966, 1967 and 1968.

CONCLUSIONS OF LAW

A. That section 1087(d) of the Tax Law states in pertinent part:

> "Overpayment attributable to net operating loss carry back - A claim for credit or refund of so much of an overpayment under Article 9-A as is attributable to the application to the taxpayer of a net operating loss carry back shall be filed within three years from the time the return was due for the taxable year of the loss,..."

B. That Black's Law Dictionary (4th Edition, West Publishing Company) defines "due date" as:

> "Time appointed or required for filing a tax return, and in the event of an extension of time to file return, is the date to which period for filing is extended."

C. In numerous sections and sub-sections, the New York State Tax Law uses the phrase "due date" in conjunction with the phrase "as determined without any regard to any extension of time granted to the taxpayer," or a phrase similar thereto.

The failure of section 1087(d) to include that limiting phrase creates an ambiguity.

D. Where a tax statute is ambiguous, the language must be construed in favor of the taxpayer and against the taxing authority. Matter of Grumman Corp. v. Board of Assessors, 2 NY2d 500, 161 NYS2d 393 (1957); Metropolitan Convoy Corp. v. City of New York, 2 NY2d 384, 390, 161 NYS2d 31 (1957) and Matter of Suffolk County Loan v. Bragliani, 5 NY2d 579, 584, 186 NYS2d 602 (1959).

E. That petitioner filed its claim within the statutory period, as computed by including the extension of time granted to it; therefore, said claim was timely filed.

F. That the petition of United Artist Corp. is granted and the notices of deficiency issued to it are hereby cancelled. Petitioner's claims for refund for 1966, 1967 and 1968 should be allowed.

DATED: Albany, New York

NOV 1 6 1979

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER