

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Universal Charge Plan, Inc. :

: 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 Fiscal Years Ended 8/3/73 & 8/31/74. :

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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Universal Charge Plan, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Universal Charge Plan, Inc.
ATTN: Milton J. Jacobson
211 Broadway
Lynbrook, NY 11563

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
19th day of June, 1981.

Carmie R. Hagelund

J. Vredenburg

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

June 19, 1981

Universal Charge Plan, Inc.
ATTN: Milton J. Jacobson
211 Broadway
Lynbrook, NY 11563

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
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
UNIVERSAL CHARGE PLAN, INC. : DECISION
for Redetermination of a Deficiency or for :
Refund of Franchise Tax on Business Corporations :
under Article 9-A of the Tax Law for the Fiscal :
Years Ended August 31, 1973 and August 31, 1974. :

Petitioner, Universal Charge Plan, Inc., 211 Broadway, Lynbrook, New York 11563, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal years ended August 31, 1973 and August 31, 1974 (File No. 20387).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 18, 1979 at 10:45 A.M. Petitioner appeared by Milton J. Jacobson, president. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

- I. Whether disallowance of interest expense indirectly attributable to subsidiary capital was proper.
- II. Whether assertion of tax on subsidiary capital was proper, where the subject subsidiary was on the verge of insolvency and was actively engaged in liquidating its portfolio.

FINDINGS OF FACT

1. On July 14, 1976, the Audit Division issued to petitioner, Universal Charge Plan, Inc., notices of deficiency asserting additional franchise taxes due for fiscal years ended August 31, 1973 and August 31, 1974, as follows:

<u>FYE</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
8/31/73	\$3,860.82	\$ 670.20	\$4,531.02
8/31/74	2,559.68	345.87	2,905.55
	<u>\$6,420.50</u>	<u>\$1,016.07</u>	<u>\$7,436.57</u>

The deficiencies consisted of two parts: (1) disallowance of interest expense indirectly attributable to subsidiary capital, which expenses were \$36,124.97 and \$21,609.53 respectively, for fiscal years ended August 31, 1973 and August 31, 1974; (2) tax on subsidiary capital applied to Dale Factors Corp., computed by adding the value of the subsidiary and loans or advances to the subsidiary.

2. Universal Charge Plan, Inc. is a New York corporation, the principal business activity of which is consumer credit financing. Petitioner had interest in five subsidiaries, including Dale Factors Corp. ("Dale"), a commercial finance company in which petitioner held 88 percent of the voting stock.

3. In 1971, the major New York banks with which Dale had credit lines withdrew the credit accommodations. In the exercise of its business judgment, petitioner elected to cause Dale to sell off its saleable portfolio and apply the proceeds thereof to the bank debts. In April, 1971, Dale ceased operations and commenced liquidation of its non-saleable portfolio, which process continued through the years at issue.

4. The consolidated balance sheet for fiscal year ended August 31, 1973, which petitioner submitted with its corporation franchise tax report, indicated intercorporate loans and debts as follows:

ASSETS

Loans - parent/subsidiaries	
Universal Charge Plan, Inc.	\$769,197.00
Universal Account Service, Inc.	61,865.00
Universal Charge Service, Inc.	107,169.00
Dale Factors Corp.	30,500.00
	<u>\$968,731.00</u>

LIABILITIES AND EQUITY

Loans - parent/subsidiaries	
Universal Credit Management, Inc.	\$ 38,231.00
Dale Factors Corp.	900,000.00
Wendel Food Manufacturing Co., Inc.	30,500.00
	<u>\$968,731.00</u>

Comparable figures from the consolidated balance sheet for the fiscal year ended August 31, 1974 were as follows:

ASSETS

Loans - parent/subsidiaries	
Universal Charge Plan, Inc.	\$768,222.00
Universal Charge Service, Inc.	4,494.00
Universal Credit Management, Inc.	84,740.00
	<u>\$857,456.00</u>

LIABILITIES AND EQUITY

Loans - parent/subsidiaries	
Universal Account Service, Inc.	\$ 52,456.00
Dale Factors Corp.	805,000.00
	<u>\$857,456.00</u>

5. For the fiscal year ended August 31, 1973, petitioner took a deduction in the amount \$425,000.00 for dividends paid by the following of its subsidiaries: Universal Account Service, Inc., Universal Charge Service, Inc. and Universal Credit Management, Inc.; it also availed itself of an interest deduction in the amount \$98,181.00. For the fiscal year ended August 31, 1974, petitioner took a deduction for dividends from the aforementioned subsidiaries in the amount \$300,000.00; the interest deduction for that year was \$62,220.00.

CONCLUSIONS OF LAW

A. That section 208.9(b)(6) of the Tax Law provides that entire net income of the corporate taxpayer shall be determined without deduction or exclusion of:

"in the discretion of the tax commission, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital."

This disallowance prevents the taxpayer from reaping a double benefit, since section 209.9(a)(1) allows the corporation to exclude income from subsidiary capital.

B. That although there may have been no "market value" for Dale, it does not follow that the subsidiary had no value. Section 208.4 of the Tax Law specifically includes within the definition of subsidiary capital indebtedness from subsidiaries. Petitioner's contention that it had no election to sell, but only to retain, its subsidiary is unconvincing. Petitioner had other alternatives, e.g., to cause the subsidiary to declare bankruptcy or to allow the subsidiary to default on its obligations; but petitioner and Dale's sister corporations chose to make substantial advances to Dale. Petitioner's advances to Dale are properly deemed subsidiary capital.

C. That since a portion of petitioner's borrowing was used to make investments in and advances to its subsidiary Dale, a portion of petitioner's interest expense was thus indirectly attributable to subsidiary capital. Matter of World Wide Volkswagen Corp., State Tax Commission, April 30, 1974; Matter of Norton Co., State Tax Commission, May 18, 1973; Matter of Texaco, Inc., State Tax Commission, December 22, 1971. Petitioner did not produce nor offer to produce any evidence directly tracing any loan to other assets of the corporation.¹

D. That section 210.1(b) of the Tax Law imposes a tax upon that portion of the corporation's subsidiary capital allocated to this state. In accordance with the reasoning of Conclusion of Law "B", supra, and the statutory definition of subsidiary capital, a tax pursuant to section 210.1(b) was properly imposed upon petitioner.

E. That the petition of Universal Charge Plan, Inc. is hereby denied; that the notices of deficiency issued July 14, 1976 are to be modified as follows:

¹ It is noted that the Audit Division ascribed to Dale a value of zero. The allocation of indirect interest expense is accomplished by multiplying interest expense by the following ratio: value of subsidiary assets (including advances to subsidiaries)/value of total assets. Petitioner's investment in its other subsidiaries must be included in the denominator of the aforementioned ratio.

(a) petitioner's investment in subsidiaries is to be included in the value of all assets;

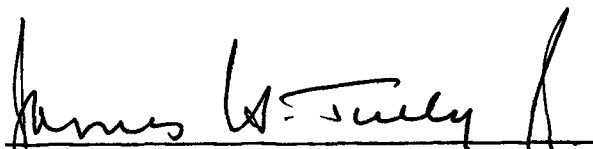
(b) petitioner's advances to Dale must be corrected to \$769,197.00 for the fiscal year ended August 31, 1973, and to \$768,220.00 for the fiscal year ended August 31, 1974;

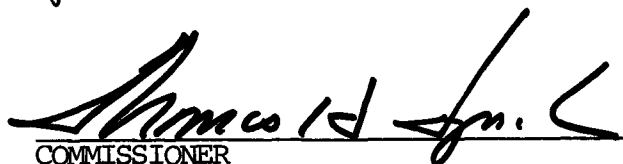
and that except as so modified, the deficiencies are in all other respects sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1981


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Handwritten signature

Universal Charge Plan, Inc.
ATTN: Milton J. Jacobson
211 Broadway
Lynbrook, NY 11563

RECEIVED BY POSTMAN

TAX APPEALS BUREAU
JUL 8 1981
RECEIVED

CERTIFIED
~~POST OFFICE~~
MAIL

STATE OF NEW YORK

STATE TAX COMMISSION

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Sworn to before me this
21st day of August, 1981.

Connie A. Haglund

J. Vredenburg