

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
WARNER COMMUNICATIONS INC. : AFFIDAVIT OF MAILING
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Stock Transfer :
Taxes under Article (x) 12 of the :
Tax Law ~~for the Year(s) or Period(s)~~ :

State of New York
County of Albany

Bruce Batchelor , 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 28th day of February , 19 77, ~~she~~ served the within
Notice of Decision by ~~(certified)~~ mail upon Warner Communications
Inc. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Warner Communications Inc.
75 Rockefeller Plaza
New York, New York 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)~~
~~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

28th day of February , 1977.

Bruce Batchelor

Just Track

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WARNER COMMUNICATIONS INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Stock Transfer :
Taxes under Article (x) 12 of the :
Tax Law ~~for the Year(s) or Period(s)~~ :

State of New York
County of Albany

Bruce Batchelor , 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 28th day of February , 19 77, she served the within
Notice of Decision by ~~(certified)~~ mail upon Alfred D. Youngwood &
Mark M. Weinstein (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alfred D. Youngwood & Mark M. Weinstein, Esqs.
Paul, Weiss, Rifkind, Wharton & Garrison
345 Park Avenue
New York, New York 10022
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

28th day of February , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

February 28, 1977

TELEPHONE: (518) **457-1723**

Warner Communications Inc.
75 Rockefeller Plaza
New York, New York 10019

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(8) **279-a** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **90 days**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
WARNER COMMUNICATIONS INC.	:	DECISION
for a Hearing to Review a Determination of	:	
Stock Transfer Taxes Due or a Determination	:	
Denying a Refund of Such Taxes under Article	:	
12 of the Tax Law.	:	

Warner Communications Inc., 75 Rockefeller Plaza, New York, New York 10019, filed an application under section 279-a of the Tax Law for a hearing to review a determination of stock transfer taxes due under Article 12 of the Tax Law.

A formal hearing was held on January 12, 1976 at 3:00 P.M., at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The applicant appeared by Paul, Weiss, Rifkind, Wharton and Garrison, Esqs. (Alfred D. Youngblood, Esq. and Mark M. Weinstein, Esq. of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

The record of said hearing has been duly examined and considered.

ISSUES

I. Whether the stock transfer tax is applicable to shares of stock held in a portfolio of a New York corporation, when it merged into a subsidiary Delaware corporation.

II. Whether or not 44,800 shares of stock included in the Notice of Determination were owned by Kinney Services, Inc. at the time of the effective date of the merger, and whether or not said shares were subject to stock transfer tax.

III. Whether 1,500,000 shares of preferred stock of National Kinney Corp. were owned by Kinney Services, Inc. or whether said shares were owned by certain trustees at the time of the merger, so as not to be subject to the stock transfer tax.

FINDINGS OF FACT

1. On October 30, 1973, the Miscellaneous Tax Bureau issued a Notice of Determination of Stock Transfer Tax Due against the applicant in the amount of \$157,923.00, based on the alleged transfer of 6,316,937 portfolio shares of stock of Kinney Services, Inc., at the time of its merger into Warner Communications Inc. in February of 1972.

2. Kinney Services, Inc. was incorporated under the laws of the State of New York in 1961.

3. Warner Communications Inc. was incorporated under the laws of the State of Delaware on December 30, 1971, and was authorized to issue 100 shares of common stock, having a par value of \$1.00 each.

4. At a meeting held on January 3, 1972, the Board of Directors of Kinney Services, Inc. agreed to a proposed merger between the corporation and Warner Communications Inc. At a meeting held on January 3, 1972, the Board of Directors of Warner Communications Inc. approved a plan of merger by and between Kinney Services, Inc.

5. On January 3, 1972, Kinney Services, Inc. and Warner Communications Inc. entered into an agreement and plan of merger which provided that the merger shall be in accordance with the applicable laws of the States of New York and Delaware; that Kinney shall be merged into Warner; that the separate existence of Kinney shall cease; that Warner shall continue in existence, and without other transfer, succeed to and possess all the properties of Kinney subject to any liabilities without further act or deed on the part of either party thereto. The agreement further provided that the capital structure of Warner would be modified to conform to the capital structure of Kinney. The effective date for the merger would be at the close of business

on the business day following the filing of the Agreement of Merger with the Delaware Secretary of State and the filing of the Certificate of Merger with the New York Secretary of State.

6. On February 10, 1972, Kinney Services, Inc., the holder of all the issued and outstanding shares of capital stock of Warner Communications Inc., consented to the proposed merger of Kinney into Warner Communications Inc.

7. On February 10, 1972, Warner Communications Inc. filed an amendment of its Certificate of Incorporation with the Delaware Secretary of State, increasing the issuance of its capital stock. On the same date, the corporation filed with the Delaware Secretary of State, a certificate of the voting powers, designations, relative rights, preferences and limitations of the shares of each class of stock. Again on the same date, the Board of Directors of Warner Communications Inc. approved the merger with Kinney Services, Inc. A Certificate of Merger was filed with the New York Secretary of State.

8. The merger became effective at the close of business on February 11, 1972.

9. The shares included in the determination, identified as Union Electric, People Gas, New York State Electric and Cleveland Electric, had been sold prior to February 11, 1972 and were not

owned by Kinney Services, Inc. at the time of the transfer under review. These shares total 44,800.

10. Kinney Services, Inc. entered into a voting trust agreement on October 1, 1971 with respect to 1,500,000 shares of convertible preferred stock of National Kinney Corp. These shares of stock were included in the Notice of Determination. The applicant contends that these shares were not owned by it on the effective date of the merger and, therefore, were not taxable. No proof was submitted to support the contention that there was an actual transfer of said shares to the trustees, nor was any evidence adduced to prove that a stock transfer tax was paid at the time of the alleged transfer, or at any time subsequent thereto.

CONCLUSIONS OF LAW

A. That the merger of the New York corporation into the applicant Delaware corporation resulted in a taxable transfer of the title to the portfolio stock of the New York corporation in this State, within the intent and meaning of section 270 of the Tax Law and of 20 NYCRR 441.1(a)(2). (Opinion of Counsel, NYS Tax Bulletin, 1966 Vol. 3, page 26).

B. That pursuant to Finding of Fact #9, the 44,800 shares of stock set forth therein were not subject to any stock transfer tax, and that portion of the determination of the Miscellaneous

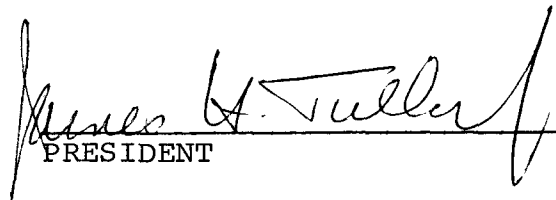
Tax Bureau, with respect thereto, be and the same is hereby cancelled.

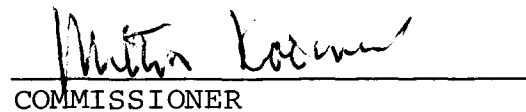
C. That the 1,500,000 shares of convertible preferred stock of National Kinney Corporation were not exempt from stock transfer tax in accordance with Finding of Fact #10 supra.

D. That the application of Warner Communications Inc. is granted to the extent indicated above and is in all other respects denied.

DATED: Albany, New York
February 28, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER