

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-03(6)C
Corporation Tax
June 11, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C021210A

On December 10, 2002, a Petition for Advisory Opinion was received from Handy & Harman, 555 Theodore Fremd Avenue, Rye, New York 10580.

The issue raised by Petitioner, Handy & Harman, is whether it is entitled to claim an industrial or manufacturing business (IMB) credit for energy taxes under sections 14-a and 210.26-a of the Tax Law against the tax imposed under Article 9-A of the Tax Law, where the manufacturing operations are conducted outside of New York State.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a manufacturing corporation with two physical locations; one in Connecticut where all manufacturing activity is performed and the other in New York State where the corporate headquarters are located.

Applicable Law

Section 14-a of the Tax Law contains the provisions with respect to the IMB credit for energy taxes, and provides, in part:

(a) Allowance of credit. A taxpayer which is an industrial or manufacturing business (IMB) ... and which is subject to tax under article nine-A ... shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (d) of this section. Such credit shall be equal to the sum ... of the taxes imposed under sections one hundred eighty-six-a, one hundred eighty-six-c, one hundred eighty-nine and one hundred eighty-nine-a of this chapter which during the taxable year were either paid by, or passed through to, the IMB, on or after January first, two thousand, but only with regard to gas, electricity, steam, water or refrigeration, or gas, electric, steam, water or refrigeration services, consumed or used by the IMB in this state.

(b) Definitions. The term “industrial or manufacturing business” shall mean a business which during the taxable year is principally engaged in activities described in clause (A), (B) or (C), or any combination thereof, of subparagraph (i) of paragraph (b) of subdivision twelve of section two hundred ten of this chapter.

* * *

(d) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article 9-A: Section 210.26-a....

Section 210.12(b)(i) of the Tax Law provides, in part:

... (A) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (B) industrial waste treatment facilities or air pollution control facilities, used in the taxpayer's trade or business, (C) research and development property

Section 210.26-a(a) of the Tax Law contains provisions for the IMB credit for energy taxes under Article 9-A of the Tax Law, and provides:

Allowance of credit. A taxpayer which is an industrial or manufacturing business (IMB) shall be allowed a credit for energy taxes, to be computed as provided in section fourteen-a of this chapter, against the tax imposed by this article.

Opinion

The term IMB includes a business that is principally engaged in manufacturing, an activity described in section 210.12(b)(i)(A) of the Tax Law. In determining whether a taxpayer is principally engaged in manufacturing, the activities of the entire business, including facilities, branches or divisions both within and without New York State, are considered. (See New York State Department of Taxation and Finance Important Notice, N-00-19, September 2000; and Technical Services Memorandum entitled Summary of 2000 Corporation Tax Legislative Changes Taking Effect in 2000, October 13, 2000, TSB-M-00(2)C.) Under sections 14-a and 210.26-a of the Tax Law, a taxpayer that is principally engaged in an eligible industrial or manufacturing business is allowed to claim the IMB credit for energy taxes imposed under sections 186-a, 186-c, 189, and 189-a of the Tax Law, which during the taxable year were either paid by or passed through to it with regard to gas, electricity, steam, water or refrigeration, or gas, electric, steam, water or refrigeration services consumed or used by the taxpayer in New York State.

In this case, Petitioner's IMB eligible business is manufacturing. All of Petitioner's manufacturing activities are conducted in Connecticut, and its corporate headquarters are located in New York. Assuming that Petitioner is principally engaged in manufacturing, Petitioner is entitled to claim an IMB credit against Petitioner's tax imposed under Article 9-A of the Tax Law, as provided under sections 14-a and 210.26-a of the Tax Law, for the energy taxes imposed under sections 186-a, 186-c, 189, and 189-a of the Tax Law, which during the taxable year were either paid

TSB-A-03(6)C
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by or passed through to it with regard to gas, electricity, steam, water or refrigeration, or gas, electric, steam, water or refrigeration services consumed or used by Petitioner in New York State.

DATED: June 11, 2003

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.