

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-85 (27) C
Corporation Tax
November 26, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C850828A

On August 28, 1985 a Petition for Advisory Opinion was received from Paul M. Edgette, Esq., 174 Meadowview Lane, Williamsville, New York 14221.

The issue presented by Petitioner is whether two corporations are "substantially similar in ownership" for purposes of qualifying as a "new business" as defined in section 210.12(j) of the Tax Law, thus, becoming eligible for a credit or refund of unused investment tax credits as provided in section 210.12(e) of the Tax Law.

Petitioner has presented the following hypothetical situation for purposes of this advisory opinion. Corporation A is a foreign corporation that does not transact business in New York State. Corporation B, a New York corporation, is a wholly owned subsidiary of Corporation A engaged in the business of wholesale distribution of widgets. Corporation C, also a subsidiary of Corporation A, is engaged in the retail distribution of widgets. Corporation A owns 79% of the stock of Corporation C. The remaining stock of Corporation C is owned by a person unrelated to either Corporation A or Corporation B. Petitioner inquires whether Corporation C is substantially similar in ownership to Corporation B and therefore does not qualify as a "new business" as defined in section 210.12(j) of the Tax Law.

Section 210.12 of the Tax Law provides for a credit against the tax imposed by Article 9-A based upon a percentage of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, which:

1. is acquired, constructed, reconstructed or erected by the taxpayer after December 31, 1968;
2. is depreciable pursuant to section 167 of the Internal Revenue Code or recovery property with respect to which a deduction is allowable under section 168 of the Internal Revenue Code;
3. has a useful life of four years or more;
4. is acquired by the taxpayer by purchase as defined in section 179(d) of the Internal Revenue Code;
5. has a situs in New York State; and
6. is principally used by the taxpayer in the production of goods by manufacturing, processing or other specified activities.

Section 210.12(e) of the Tax Law, applicable with respect to taxable years beginning on or after January 1, 1982, provides that where a new business as defined in section 210.12(j) of the Tax Law is entitled to an investment tax credit carryover, it may elect to treat the carryover as an overpayment of tax to be refunded.

Section 210.12(j) of the Tax Law, in pertinent part, provides that a new business shall include any corporation, except a corporation which:

"...(2) is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article;...."

For purposes of this advisory opinion it will be assumed without deciding, that Corporation C has acquired property which meets the criteria set forth for the investment tax credit. In particular, the property must be principally used by the taxpayer in the production of goods by manufacturing, processing, or other specified activities.

Corporation A owns 100% of the stock of Corporation B and 79% of the stock of Corporation C. Corporation A, thus, has an absolute controlling interest in both Corporations B and C. Accordingly, Corporation C is substantially similar in ownership to Corporation B for purposes of qualifying as a "new business" for purposes of section 210.12(j) of the Tax Law.

DATED: November 26, 1985

s/ANDREW F. MARCHESE
Chief of Advisory Opinions

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