

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

TSB-A-85 (5) C
Corporation Tax
April 30, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C830726D

On July 26, 1983 a Petitioner for Advisory Opinion was received from Unitel Video Services, Inc., 510 West 57th Street, New York, New York 10019.

At issue is whether Petitioner is entitled to the investment tax credit provided under section 210(12)(b) of the Tax Law with respect to real and tangible personal property used in processing.

Petitioner provides a full range of processing services to the video communications industry for the production, editing and duplication of television commercials and programs on videotape in New York City. Other processing services include videotape recording of corporate and industrial communications and transferring film to videotape and creating test commercials from artwork. Petitioner also provides processing services for transferring 16 mm and 35 mm motion picture film and slides to videotape.

Petitioner provides, in its own buildings located in New York City, the studios, equipment and personnel needed to record and process television commercials and other videotaped communications. The equipment includes color television cameras, videotape recorders, sound monitoring, mixing and lighting equipment. Petitioner also has the equipment to perform the special optical and audio effects to produce a master videotape suitable for telecast and to duplicate the master for distribution.

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.

Such section also provides that the term "manufacturing" means the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment.

Section 5-2.4 of the Business Corporation Franchise Tax regulations states, in part:

"(c) The term "principally used" means more than 50 percent. A building or addition to a building is principally used in production where more than 50 percent of its usable business floor space is used in storage and production. Floor space used for bathrooms, cafeterias and lounges is not usable business floor space. Space used for offices, accounting, sales and distribution is not used in production. Dual purpose machinery is principally used in production when it is used in production more than 50 percent of its operating time."

All of the Petitioner's aforementioned activities are associated with "processing" as such word is referred to in section 210.12 of the Tax Law. Accordingly, as Petitioner is engaged in "processing", the Petitioner's video equipment would qualify for the investment tax credit, provided it meets the other criteria of the Statute which are not at issue here. A building, including improvements, which the Petitioner owns would qualify for the credit if it meets the criteria of the Statute including the principal use test defined in section 5-2.4 of the Business Corporation Franchise Tax regulations. Space used for the Petitioner's accounting, administrative and executive offices is not used in production.

DATED: April 26, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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