

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

TSB-A-93 (20) C
Corporation Tax
November 9, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C930823C

On August 23, 1993, a Petition for Advisory Opinion was received from United Welding Supply Co., Inc., 24 River Street, Amsterdam, New York 12010.

The issue raised by Petitioner, United Welding Supply Co., Inc., is whether the purchase of a new plant and equipment qualifies for the investment tax credit under Article 9-A of the Tax Law.

During 1992, Petitioner acquired a new plant in Scotia, New York at a cost of \$362,729, and new plant equipment at a cost of \$284,086. The plant has a 31 1/2 year MACRS life and the equipment has a 7 year MACRS life. The equipment is used exclusively in the process. The plant is also used exclusively in this process.

The following is a description of the process involved in Petitioner's operation. Petitioner purchases liquid cryogenics from its supplier. The supplier pumps these liquid cryogenics into Petitioner's low pressure tanks. Petitioner then converts the liquid cryogenics into vapor form by means of pumps, vaporizers, compressors, fill racks. The gas is then put into high pressure cylinders for shipment to Petitioner's customers.

For taxable years beginning after 1990, section 210.12 of the Tax Law allows an investment tax credit against the tax imposed under Article 9-A of the Tax Law equal to five percent with respect to the first \$350 million of the investment credit base. The investment credit base is the cost or other basis for Federal income tax purposes of qualified tangible personal property and other tangible property, including buildings and structural components of buildings.

Section 5-2.1 of the Business Corporation Franchise Tax Regulations (hereinafter "Corporation Regulations") provides that the taxpayer must claim the investment tax credit for the first taxable year in which the property becomes qualified property.

Under section 5-2.2 of the Corporation Regulations for taxable years beginning after 1990, the term "qualified property" means tangible personal property and other tangible property, including buildings and structural components of buildings, which:

- (1) are acquired, constructed, reconstructed or erected after 1990;
- (2) are depreciable pursuant to section 167 of the Internal Revenue Code;
- (3) have a useful life of four years or more;

- (4) are acquired by purchase as defined in section 179(d) of the Internal Revenue Code;
- (5) have a situs in New York State; and
- (6) are 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.

Section 210.12(b)(ii)(A) of the Tax Law provides that the term "manufacturing" shall mean "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." Additionally, section 210.12(b)(ii)(A) provides that "[p]roperty used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced."

Section 5-2.4(c) of the Corporation Regulations provides that 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.

In the Matter of Plattekill Mountain Ski Center, Inc., Dec St Tax Comm, March 9, 1984, TSB-H-85(28)C, it was held that the production of snow by the use of snowmaking equipment constitutes manufacturing so as to qualify such equipment for the investment tax credit. It was of no consequence that the petitioner was not a manufacturing concern because section 210.12 focuses on the use of the equipment and the equipment at issue was employed by the petitioner solely in the manufacturing process.

Herein, when Petitioner converts the liquid cryogenics held in low pressure tanks into vapor form that is put into high pressure cylinders for use by Petitioner's customers, such process constitutes the production of goods by manufacturing or processing. If Petitioner's machinery and equipment is principally used for such manufacturing or processing purpose, such machinery and equipment will qualify for the investment tax credit if the machinery and equipment meets all of the other requirements contained in section 210.12 of the Tax Law and Subpart 5-2 of the Corporation Regulations. In addition, if pursuant to section 5.2-4(c) of the Corporation Regulations, Petitioner's building is principally used for such manufacturing or processing purpose, such building will

qualify for the investment tax credit if the building meets all of the other requirements contained in section 210.12 of the Tax Law and Subpart 5-2 of the Corporation Regulations.

DATED: November 9, 1993

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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