

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

TSB-A-88 (10) I
Income Tax
June 24, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. 1871125B

On November 25, 1987, a Petition for Advisory Opinion was received from Albany Equipment Management Associates, 1001 Loudon Road, Latham, New York 12110.

The issue raised is whether advanced diagnostic imaging equipment purchased and owned by Petitioner and used for processing and producing X-rays, scans, images and related diagnostic information qualifies for the investment credit under section 606(a) of the Tax Law.

Petitioner, a New York limited partnership, is engaged in the business of providing various advanced diagnostic imaging modalities, including conventional X-rays, ultrasound, computerized axial tomography (CAT) and magnetic resonance imaging (MRI).

Petitioner owns and maintains a facility for the conduct of its diagnostic activities. During 1985, Petitioner purchased various pieces of medical diagnostic equipment, including a .5T Magneton MR System with a VAX 11-730 Computer and peripheral attachments, a Somatom DRG CT Total Body Scanner, a Siregraph C Radiologic/Fluoroscopic Unit, a Mammomat B Mammography Unit, and a Technicare M8100 Auto Sector IV Ultrasound Unit. All of this equipment is used to produce X-rays, scans, images and related diagnostic information from the live human body. All ancillary supplies necessary for its medical imaging services (dyes, film, etc.) as well as other equipment are provided by Petitioner at its expense.

Petitioner is also responsible for hiring, training and supervising administrators, receptionists, technicians to operate its medical equipment and clerical personnel necessary for a medical imaging service. Petitioner's service charges are fixed by a schedule based upon the number of procedures performed. If payment is not received for a procedure performed, Petitioner receives no income. If only a partial payment for a procedure performed is received, Petitioner and participating radiologists each receive a pro rata portion of the payment. If no procedures are performed, Petitioner receives no consideration.

In every instance where Petitioner performs a diagnostic procedure upon a patient, the final product of the process is a tangible image on X-ray film. The original film produced by each diagnostic procedure is retained by Petitioner and a copy of the film is provided to the patient or directly to the patient's attending physician to use in treating the patient.

For the taxable year in question, section 606(a) of the Tax Law allowed a credit equal to six percent of the cost or other basis for federal income tax purposes, of tangible personal property and other tangible property which:

- (1) was acquired, constructed, reconstructed or erected after June 30, 1982;
- (2) was depreciable pursuant to section 167 of the IRC or recovery property with respect to which a deduction was allowable under section 168 of the IRC;
- (3) had a useful life of four years or more;
- (4) was acquired by purchase as defined in section 179(d) of the IRC;
- (5) had a situs in New York State; and
- (6) was 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 606(a)(2) 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 606(a)(2) 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 103.1(d) of the Personal Income Tax Regulations provides that the term "principally used" means more than 50 percent. Furthermore, section 606(a)(4) provides that "[a] taxpayer shall not be allowed a credit under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation." Any contract or agreement to rent or for a license to use property is considered a lease.

Petitioner states that the equipment in question was acquired during 1985, that it is depreciable pursuant to section 167 of the IRC, that it has a useful life of ten years, that it was purchased, as defined in section 179(d) of the IRC, and that it is located at Petitioner's place of business in Latham, New York.

The criteria at issue herein is whether the equipment is principally used by Petitioner in the production of goods by manufacturing, processing, etc.

In applying section 606(a)(2), the State Tax Commission has ruled that equipment used in the production of video tapes constitutes equipment used in the production of goods by manufacturing so as to satisfy the production criteria. Richard H. Roberts, State Tax Commission Advisory Opinion, TSB-H-81(57)I.

The term "processing," while not defined in the statutory provision or regulation here at issue, is defined at 20 NYCRR 527.4(d) (a sales and use tax regulation) as "the performance of any service on tangible personal property for the owner which effects a change in the nature, shape or form of the property." In Continental Terminals, State Tax Commission, TSB-H-82(4)C, the Tax Commission held such definition to be applicable to investment tax credit determinations made under Article 9-A. It appears clear from such definition of the term "processing" that the transmutation of raw film to usable video tapes and films, and blank tapes to usable radio tapes, constitutes "processing" within the meaning of section 210.12(b) of the Tax Law. The conversion of raw film or tape into a form suitable for transmission is in effect a form of imprinting. Such procedure has itself been held by the Tax Commission to constitute processing, defined by the Tax Commission as "an operation whereby raw material is subjected to some special treatment, by artificial or natural means, which transforms or alters its form, state or condition." Matter of Multimode, Inc., State Tax Commission, May 20, 1983, TSB-H-83(23)C. See also Matter of Epic Chemicals, State Tax Commission, October 30, 1981, TSB-H-81(59)C. The view represented herein is given further support by a consideration of the examples given in connection with 20 NYCRR 527.4(d). Thus, it is there held that the term "processing" applies to (1) the development of film by a photographic laboratory, and (2) cutting, editing, sound dubbing and the addition of titles to convert exposed and developed film footage into a completed film. The creation of television films and video tapes, as well as radio tapes, similarly effects changes in the nature and qualities of film and tape, and thus falls under the rubric of "processing".

The Article 9-A investment credit provisions contained in section 210.12 of the Tax Law are similar to those provided under section 606(a) of the Tax Law. Therefore, the determinations made under Article 9-A would also be appropriate with respect to personal income tax.

Herein, the diagnostic equipment is used to produce on X-ray film, the X-rays, scans, images and related diagnostic information from the live human body. The creation of such films are similar to the production of video tapes, radio tapes and television films.

Accordingly, the diagnostic equipment that is principally used in the production of the X-ray films constitute property used in the production of goods by manufacturing and processing, within the meaning and intent of section 606(a)(2) of the Tax Law.

Therefore, for taxable year 1985, an individual partner of Petitioner will be allowed an investment credit pursuant to section 606(a) of the Tax Law against the tax imposed under section 601(a) for its distributive share of the cost or other basis of the diagnostic equipment if such equipment is principally used by Petitioner's employees to produce the X-ray films.

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It should be noted that if Petitioner leased its equipment 50 percent or more of the time, an investment tax credit would not be allowed because the equipment would not have been "principally used" by Petitioner, itself.

DATED: June 24, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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