

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

TSB-A-85 (18) C
Corporation Tax
TSB-A-85 (6) I
Income Tax
October 3, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. Z840504A

On May 4, 1984 a Petition for Advisory Opinion was received from Richard W. Kaszubinski, c/o Hongo & Pellizzari, CPA's, 7591 Morgan Road, Liverpool, New York 13088.

The issue raised is whether tangible personal property, such as machinery and equipment, used in the construction of new homes and commercial buildings by corporations, partnerships or sole proprietors qualifies for an investment tax credit.

Section 210.12 of Article 9-A and Section 606(a) of Article 22 of the Tax Law provide for an investment tax credit for corporations and individuals, respectively.

Section 210.12 of the Tax Law provides for a credit against 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 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, assembling or other specified activities.

The provisions of section 606(a) are substantially the same as the provisions of section 210.12 as included above.

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The investment credits allowed under sections 210.12 and 606(a) of the Tax Law are allowed for property principally used by the taxpayer in the production of goods by manufacturing, processing, assembling or other specified activities. While the term "goods" is not defined in the Tax Law, its common meaning includes tangible personal property such as chattel, wares, merchandise, food products and agricultural products but not real property or improvements to real property such as homes and other buildings.

As Petitioner points out in his petition, a maker of cement blocks is considered to be producing goods by manufacturing. This is so because the product sold by a cement block maker retains its identity as personal property in the form of a manufactured good at the time of sale. In contrast, a home or commercial building has lost its identity as individual personal property and has taken on the identity of real property or an addition or improvement to real property.

Accordingly, a builder of homes or commercial property is not entitled to an investment credit under sections 210.12 or 606(a) of the Tax Law because his machinery and equipment is not used in the production of goods inasmuch as he produces real property rather than tangible personal property.

DATED: October 1, 1985

s/ANDREW F. MARCHESE
Chief of Advisory Opinions

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