

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

TSB-M-78 (1)C  
Corporation Tax  
Instructions and Interpretations Section  
April 7, 1978

Subject: Corporation Tax - Investment Tax Credit

Advice has been requested concerning the effect of the Decision of the State Tax Commission in the Matter of the Petition of John F. and Sara Mahoney (S.T.C. 4/1/76). The Mahoney decision was based on an income tax case and it defines the legislative intent of the law.

The decision held that kitchen equipment when used to prepare food served in a restaurant is ineligible for the investment tax credit. It was decided that the preparation of food to be served in a restaurant does not constitute the production of goods as contemplated by New York State Tax Law. The word "processing" refers to a type of industrial activity related to manufacturing and not to the preparation of food to be served in a restaurant.

Since the investment tax credit provisions for Section 606(a)(2) of the New York State Income Tax Law and Section 210.12(b) of the New York State Corporation Tax Law are identical, then the application of the laws should be the same.

This decision has limited applicability, since it only applies to businesses which serve food. It does not apply to kitchen equipment of businesses which prepare and package frozen or canned foods and distribute such products through normal distribution channels such as wholesalers, supermarkets and grocers.

Kitchen equipment used by take-out restaurants and catering services are ineligible for the investment tax credit. There may be businesses which use kitchen equipment both to prepare food which is frozen or canned, and distributed through wholesalers, etc., and to prepare food for on the premises or take-out. In such a situation, the quantity or value of each type of product would be compared and a 50% rule should be used to determine whether the equipment is principally used in production or not.