

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

TSB-A-82(8)C  
Corporation Tax  
June 9, 1982

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C820111B

On January 11, 1982, a Petition for Advisory Opinion was received from the Daniel Green Company, 1 Main Street, Dolgeville, New York 13329.

During 1979, Petitioner a manufacturer of footwear, added a new women's rest room to a building that was constructed prior to December 31, 1968. At issue is whether the expenditure for the rest room, added to a building principally used in manufacturing, qualifies for the investment tax credit provided for under Article 9-A of the Tax Law. It is concluded herein that it does not.

Section 210.12(b) of the Tax Law describes the type of property which qualifies for the investment tax credit as including "tangible personal property and other tangible property, including buildings and structural components of buildings, which are: . . . principally used by the taxpayer in the production of goods by manufacturing . . ." Such provision goes on to include as property used in the production of goods, "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 . . ." Thus, qualifying property must be principally used either in the production of goods or in the repair and service of other qualifying property.

In Matter of Empire Freezers of Syracuse, Inc., TSB-H-78(1)C, the State Tax Commission held that in order for ancillary facilities to be considered to be used in the production process, they must be "integrally related to the taxpayer's production enterprise." Since the property in question is not used directly in production and is not integrally related to the Petitioner's production enterprise, the same does not qualify under the statute. It is insufficient that it is connected to or part of a pre-existent building principally used in production, or that the entire facility, after the addition, remains principally used in production.

Accordingly, the facility in question does not constitute qualified property, and the expenditure therefor does not qualify for the investment tax credit provided for under Section 210.12 of the Tax Law.

DATED: June 9, 1982

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau