STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION PETITION NO. C861008B

On October 8, 1986, a Petition for Advisory Opinion was received from Grimaldi, Fagliarone and Tornatore, 650 James Street, Syracuse, New York 13203.

The issue raised is whether a business in the natural gas extraction industry may claim an investment tax credit, pursuant to section 210.12 of the Tax Law, for equipment used exclusively in the installation of pipeline to connect a newly drilled gas well to the existing natural gas pipeline system. The pipeline is necessary for the transportation of the natural gas after its extraction from the ground.

The equipment at issue is tangible personal property, depreciable under section 167 of the Internal Revenue Code, with a five year useful life and a situs in New York State.

Section 210.12 of the Tax Law provides that a taxpayer is allowed a credit against the tax imposed by Article 9-A with respect to qualified tangible personal property and other tangible property 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 as 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, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing.

Pursuant to section 210.12(b) of the Tax Law, the term "property used in the production of goods" includes 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 includes all facilities used in the production operation, including storage of materials to be used in production and of the products that are produced. Thus, qualifying property must be principally used either in the production of goods or in the repair and service of other qualifying property.

The installation of pipeline to connect a newly drilled gas well to an existing pipeline system is the performance of a service that is not part of the extracting operation. Furthermore, since the pipeline in question is not qualifying property, the installation of such pipeline is not a repair or service to other qualifying property. Therefore, the equipment used in the installation of such pipeline is not qualifying property because the equipment is not used in the production of goods and is not related to the repair and service of other qualifying property.

Accordingly, a business that installs pipeline to connect a newly drilled gas well to an existing pipeline system may not claim the investment tax credit, pursuant to section 210.12 of the Tax Law, on the cost or other basis of the equipment used in the installation of connecting pipeline because such equipment is not qualifying property.

DATED: February 20, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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