

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

TSB-A-88 (3)C  
Corporation Tax  
February 10, 1988

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C871204A

On December 4, 1987, a Petition for Advisory Opinion was received from IPCO Corporation, 1025 Westchester Avenue, White Plains, New York, 10604.

The issue presented is whether an "eye examination unit" qualifies for the investment tax credit under section 210(12)(b) of the Tax Law.

IPCO Corporation operates retail optical locations under the name "Sterling Optical". Each location utilizes an eye examination unit. The purpose of this unit is to give customers an eye examination to determine whether a prescription or a change in prescription for eyeglasses is required. The prescription, if needed, is usually filled at the location at which the examination takes place.

Petitioner states that when a customer has an eye examination and doesn't purchase eyeglasses, the customer is charged only for the examination. If a customer purchases eyeglasses only, with no examination, the customer is charged only for the eyeglasses. If the customer has an eye examination and purchases eyeglasses the customer is charged separately for each. Petitioner states that there is a separate charge for the eye examination and the eyeglasses because customers may choose their own frames and there are different prices for the frames and lenses.

Section 210(12) of the Tax Law provides for a credit against the corporate franchise 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 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, or other specified activities.

To qualify for the investment tax credit, the taxpayer must establish that the property in question is used in the production of goods by manufacturing or processing. The term "manufacturing" is generally defined as "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. (20 NYCRR 5-2.4(2)). A process must bring about a substantial or significant change in the basic material to constitute manufacturing. The term "processing" has been defined as the performance of any service on tangible personal property for the owner which effects a change in the natural shape or form of the property (see, Technical Services Bureau Memorandum TSB-M-87(5)C).

The investment tax credit as provided for in section 210(17)(b) of the Tax Law was intended by the Legislature as a tax incentive designed to induce the location in New York of productive facilities and make New York a more attractive place for manufacturers (see, Memorandum of Tax Structure Study Committee, 1969 N.Y. Legis. Ann., at 447-449).

While it may be true that individuals ordinarily do not purchase prescription eyeglasses without first obtaining an eye examination, it does not follow that the examination is an integral part of the production and assembly procedure. To qualify for the investment tax credit, the property must be principally used in the production of goods or effect a substantial or significant change in the nature, shape or form of tangible personal property. The eye examination unit is not integrally involved in the production or manufacture of goods. The eye examination is a separate process, distinct from the production of eyeglasses. Accordingly, the eye examination unit does not qualify for the investment tax credit.

DATED: February 10, 1988

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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