

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

TSB-A-90(4)C
Corporation Tax
February 8, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C891020A

On October 20, 1989, a Petition for Advisory Opinion was received from Diagnostic Medical Instruments, Inc., 6724 Thompson Road, Syracuse, New York 13211.

The issue raised by Petitioner, Diagnostic Medical Instruments, Inc., is whether research and development tax credits earned by an S corporation in a taxable year beginning before December 31, 1982 can be carried forward by such corporation to taxable years when the S election is revoked.

Petitioner was an electing Small Business Corporation (S corporation) for the fiscal year beginning October 1, 1982 and ending September 30, 1983. During that year Petitioner earned \$17,212 in research and development tax credits pursuant to section 210.18 of the Tax Law. Originally, these credits were passed through to the shareholders for utilization on their 1983 personal income tax returns. However, around September of 1986, the New York State Department of Taxation and Finance notified each shareholder that the 1982 Tax Law did not allow for the pass through of research and development tax credits to the shareholders. Accordingly, the shareholders returns were adjusted for this credit previously taken. Petitioner contends that these research and development tax credits belong to Petitioner and, if unavailable for pass through to its shareholders, rightfully exist as a tax credit carryover to a year when Petitioner has terminated its S corporation status and now is taxed as a regular Article 9-A taxpayer.

It is Petitioner's position that research and development tax credits applicable to fiscal year ended September 30, 1983 should be reflected as a component of the current research and development tax credit carryover position pursuant to section 210.18(e) of the Tax Law.

S corporation shareholder provisions, under Article 22 of the Tax Law, were amended by Chapter 606 of the Laws of 1984 which added a new section 606(i) of the Tax Law, effective for taxable years beginning after December 31, 1982, wherein research and development tax credits are now available for pass through to the shareholders.

For the taxable year ended September 30, 1983, section 210.18(a) of the Tax Law provides that a taxpayer shall be allowed a credit against the tax imposed by Article 9-A of the Tax Law with respect to qualifying property used or to be used for purposes of research and development in the experimental or laboratory sense. Such credit is allowable in the taxable year that the property becomes qualified. However, the credit allowed for any taxable year shall not reduce the tax due for such year to less than the fixed minimum tax. When the amount of credit allowable reduces the tax to the fixed minimum, any amount of credit not deductible in such taxable year may be carried forward to the following year or years and may be deducted from the taxpayer's tax for such year or years.

Section 208.2 of the Tax Law provides that the term "taxpayer" means any corporation subject to tax under Article 9-A.

Section 209.8 of the Tax Law provides that a taxpayer which is an S corporation for federal income tax purposes shall not be subject to tax under Article 9-A of the Tax Law for any taxable year for which an election is in effect pursuant to section 660 of the Tax Law.

Herein, for taxable year beginning October 1, 1982 and ending September 30, 1983, the election under section 660 of the Tax Law was in effect and Petitioner was not subject to tax under Article 9-A. There is no provision in section 210.18 of the Tax Law to allow a carryforward of a tax credit computed for a taxable year during which a corporation was not subject to tax under Article 9-A.

Accordingly, Petitioner may not carryforward a research and development tax credit computed for taxable year ended September 30, 1983, even though Petitioner is now an Article 9-A taxpayer.

DATED: February 8, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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