

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

TSB-A-93 (15) C
Corporation Tax
July 12, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C930420A

On April 20, 1993, a Petition for Advisory Opinion was received from School of Visual Arts, Inc., 209 East 23rd Street, New York, New York 10010-3994.

The issue raised by Petitioner, School of Visual Arts, Inc., is whether the Petitioner's purchases of various tools and equipment used to produce artwork qualify for the investment tax credit pursuant to section 210.12 of the Tax Law.

Petitioner operates an independent college of arts for profit. Petitioner offers graduate and undergraduate degree programs to its students with concentrations in film and video, interior design, fine arts, art education, art therapy, advertising graphic design, illustration, cartooning, computer art, photography, humanities and sciences, and art history.

Petitioner prides itself on the quantity and caliber of its equipment, which is used by its students, faculty and staff to create visual, electronic and tactile works of art. The principal items of such equipment used for photography, film and video production, graphic art and other artistic endeavors, are summarized below:

Photography

Rastar video monitors
Dynalite flash kits and accessories
Bogen lighting hardware and accessories
Speedotron power supply (for strobe lights)
Calumet 8x10 camera, adaptors, case
Calumet sink, backplash, sink mat, plumbing fixtures for photo lab
Kowa camera lenses
Nikon cameras and lenses
Nikkor lenses
Arkay phonographic film dryer, clips, racks
Hasselblad cameras
Schneider camera lenses
Arkay 6 ft. monostand
Photographic print washer
Photographic lamp housings, base boards
Photographic 20x24 rocker washer
Hewlett Packard laser printers, interface adaptors
Minolta flash meters
Kodak ektagraphic slide projectors, lenses
Rodagon camera lenses
Omega dichro photo enlarger heads
Omega Controller II for photo enlarger
Sony color video monitor
Leitz camera, lenses

Cibachrome processor (component of color print enlarger)
10x10 photo enlarger head
90TR Densitometer (measures density of photo film grain)
FV 810 - 200 vertical photo enlarger
AVL FX-2 photo projector w/dissolve
Novatron photo lighting equipment
RA conversion Kit (converts one photographic film stock to another)
D5XL photo enlarger, components
2024PW powered photographic print washer
Photomix temperature control (for photo lab chemicals)
Omnichrom 1000 chromatek unit (used in silk screen-like process)
S550 ultrasonic cleaner (maintains photo silver reprocessor)
Nuarc exposure unit (burns plates for photo prints)
Krematic color photo processor w/water panel package, transport tray
30 gallon H.F. mixer (for photo chemicals)
CPS1 photo processor w/cibachrome, washer/dryer modules
Toyo 45A cameras
Caltar lenses
Vacuum easel/pump (flattens large photo prints)
Dahle 136 photo proof cutter
Photo enlarger work stations
Silver recovery system (photo lab equipment)
Arkay photo print driers
Masterpiece photo seals press
Apple macintosh computer system
Panasonic video recorder
Photo lab sinks, shelves, stands, plumbing, sink mats
Chemical baths
Photographic developers
Capitalized improvements to darkrooms
Studio curtains
Baffles and backdrops
Personal computers, software, laser printers used exclusively for image scanning and page layouts

Film and Video Production

JVC color video camera w/remote control
AVI diopter/close-up (camera accessory)
Sony color video cameras, batteries
Sony portable U-Matic VCR
O'Connor fluid head w/quick release (mount camera on tripod or dolly)
Lisand camera tripod
JVC video recorders
Saltman camera stands
Sennheiser microphones, power supplies and accessories
Neumann microphones and accessories
Sony videotape editing systems
Sony video cameras
Sony 8mm video recorder player

Steadicam Jr. (camera motion control)
Arriflex movie camera and accessories
Shure audio mixers
Steenbeck film editing machine
Tascam compact disc player
Switar camera lenses
ELMO 16mm film projector
Lyon Lamb VAS III-B color animation system
Neriki imag master genlock (synchronizes images; video-to-video or video-to-computer)
Sencore Z meter (measures sound levels on film)
Sencore super cricket (measures levels on video)
Sencore transformers
16mm SR movie cameras and accessories
Kodak 1M200 digital cameras (for still video)
SC2 battery charger (for portable video, movie cameras)
CNV V09850 interface (between video recorders)
For-A Time base corrector w/remote control (synchronizes videodecks)
Crystal control unit (interface between movie camera and audio tape recorder)
Convergence interface (switch between cameras, Grassvalley editor, videodecks)
Video equipment cabinets
Zeiss lenses
ADC audio patch panel
Crown audio amplifier
Fresnel spot lights
Elemack spyder camera dolly
Kenwood audio power supply
Leader audio waveform monitors
Hitachi video cameras
Vinten camera tripods, dollies
Calaway video editing system
Sony video recorder
Echolab video edit control, synchroniser card
Tascam audio cassette recorder
Nagra audio tape recorder
Bolex film camera, mounts
RCA camcorders
Cables, connectors
Oxberry animation stands
Movieolas
Baffles and backdrops
Capitalized improvements to studios and soundstages

Computer Arts and Graphics

Sony trinitron color television monitors
Apple macintosh computers, keyboards, monitors, laser printers, optical scanners, tape back-ups
GTCO digipad electronic stylus (electronic drawing)
Princeton computer monitors
Mitsubishi computer monitors

Aydin computer monitors
Indtech computer and keyboard
Seagate hard drives
Magnavox computer monitors
Intel computer modules
Maxtor computer optical drives and cartridges
Sony 3/4" videotape player
TASCAM audio cassette recorder
Panasonic compact disc player
TASCAM audio line amplifier
TASCAM 6x4 audio mixer
Equipment cabinets and racks
Electrohome computer monitors
Nuvista 4MB computer board (computer circuit board)
Kodak datashow computer projector (display computer graphics)
American mitac computer, hard drive
Quantum computer hard drive
Apple macintosh display cards (computer circuits)
Seiko computer monitors
Diaquest animation controller circuit card (compute circuits)
Apple macintosh computer modems
Minolta color photocopiers
Sony computer monitors
PS translator (adapt macintosh computers to IBM format)
Model Mate Plus (computer peripheral for 3-D modelling)
Microbuffer in-line (memory buffer between hard drive and computer)
Quark express (computer graphics software)
Digital darkroom (computer graphics software)
Color encoder (signal converter from computer to output format)
Rodime hard drives
Silicon graphics workstations (computer graphics workstations)
Alias/2 graphics software
Truevision NuVusta frame buffer (plug-in computer circuit board)
Targa 16 color board (plug-in computer circuit board)
Diamond flower computer hard drives
Microtek frame buffers (computer circuit board)
Raster ops 364 video color board (computer circuit board)
Syquest hard drives
Teac tape back-up unit (downloads hard drives)
Truevision tips (graphics software)
Sigma color computer monitors
Telex 5090 LCD color projection pad (large-scale display of computer graphics)
Graphic zoomer - Q (display computer graphics)
Datapak computer software
Microtek optical scanner
Laserdisc player
Raster ops 24 bit color graphic system (circuit boards, accessories)
Lasergraphics film recorder (photographs computer graphics output)
Mobile 42 vista software

Dispenser generator (magnetic card system used to access color photocopiers)
Canon single frame video camera
Sharp color optical scanner, mirror unit
Silicon graphics IRIS turbo graphics computer w/accessories
Spectra viewframe video projector (display computer graphics output)
Miniscribe hard drives
Network cabling
Digitizers
Fiber optics equipment
Pixelmaster printers
DAT drive
Plotter
Specialized photocopiers

Other Equipment

LPB AM radio transmitter
Lincoln arc welder and accessories
Goodkin waxer (finishes graphics mechanicals)
Pottery wheels
Weaving looms
Kilns
Sandcasting equipment
Silkscreen equipment
Sculpting and woodworking tools

The preceding lists are representative and not all-inclusive. Additional items may be purchased for these purposes as technological advances require the purchase of new and more sophisticated equipment. Petitioner represents that all of the above referenced computer hardware, circuit cards or boards, software, printers, photocopiers, monitors, cabling and any other related peripheral equipment is used exclusively by its staff, faculty and students in the production of works of art. None of this equipment is ever used for accounting, management or other general business purposes.

Graphic images are electronically created and processed on the above referenced computers and related equipment. The images may be saved on the Petitioner's network for further manipulation, downloaded onto floppy disks or onto other magnetic media, including videotape. The electronically generated artwork may be printed onto photographic film, paper, or other hard copy.

For taxable years beginning after 1990, section 210.12 of the Tax Law allows an investment tax credit against the tax imposed under Article 9-A of the Tax Law equal to five percent with respect to the first \$350 million of the investment credit base. The investment credit base is the cost or other basis for Federal income tax purposes of qualified tangible personal property and other tangible property, including buildings and structural components of buildings.

Section 5-2.1 of the Business Corporation Franchise Tax Regulations (hereinafter "Corporation Regulations") provides that the taxpayer must claim the investment tax credit for the first taxable year in which the property becomes qualified property.

Under section 5-2.2 of the Corporation Regulations, the term "qualified property" means tangible personal property and other tangible property, including buildings and structural components of buildings, which:

- (1) are acquired, constructed, reconstructed or erected after 1990;
- (2) are depreciable pursuant to section 167 of the Internal Revenue Code;
- (3) have a useful life of four years or more;
- (4) are acquired by purchase as defined in section 179(d) of the Internal Revenue Code;
- (5) have a situs in New York State; and
- (6) are 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.

Section 210.12(b)(ii)(A) of the Tax Law provides that the term "manufacturing" shall mean "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."

Section 5-2.4(c) of the Corporation Regulations provides that the term "principally used" means more than 50 percent.

Herein, Petitioner is an independent college of arts offering graduate and undergraduate degree programs. As an educational institution, Petitioner's primary endeavor is the education of its students. Petitioner's staff, faculty and students use the above referenced equipment in the teaching and training of the students, the result of which may produce some artwork. However, if artwork is produced, it is only a by-product of the course study the student chose.

Accordingly Petitioner is principally using the above referenced equipment in the teaching and training of its students, not in the production of goods. Therefore, Petitioner does not meet the requirements of section 210.12 of the Tax Law and Petitioner may not claim an investment tax credit under such section.

DATED: July 12, 1993

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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