

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

TSB-A-93 (5) C
Corporation Tax
January 29, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C921103A

On November 3, 1992, a Petition for Advisory Opinion was received from Niagara Tying Service, Inc., 176 Dingens Street, Buffalo, New York 14206.

The issue raised by Petitioner, Niagara Tying Service, Inc., which is engaged in the business of manufacturing artificial meat casings for the meat industry, is whether it is eligible to claim the investment tax credit under section 210.12 of the Tax Law.

Petitioner ties and cuts meat casings. Casings are shipped from the meat companies to Petitioner to clip, tie and/or string. The casings may have to be altered prior to tying. Petitioner receives large reels of cellulose casings or fibrous casings to cut in needed lengths for stuffing purposes. Petitioner can convert reel stock to desired lengths while drilling holes, so that reel stock can be used for meat products.

Petitioner has Beck Cutter machines which cut casings from reel stock and machines which drill the holes in the stock. Petitioner's capping machines produce a closed casing along with its string machines and clipping machines. The machines are designed only for the purpose of making a closed casing.

Once the casings are tied, they are shipped back to the meat companies to complete the production process.

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." Additionally, section 210.12(b)(ii)(A) provides that "[p]roperty used in the production of goods shall include 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, including storage of material to be used in production and of the products that are produced." Section 5-2.4(c) of the Corporation Regulations provides that the term "principally used" means more than 50 percent.

Section 606(a) of Article 22 of the Tax Law is substantially similar to section 210.12 of the Tax Law. With respect to section 606(a), the investment tax credit is allowed for equipment purchased and principally utilized by a business in providing a service to another business if the purchase of the equipment by the other business would have qualified for the credit. See Technical Services Bureau Memorandum TSB-M-80(1)I, citing In the Matter of John Boadle, Dec St Tax Comm, February 13, 1980, TSB-H-80(48)I; also see Emilio A. D'Argenio, CPA, Adv Op St Tax Comm, January 7, 1986, TSB-A-86(2)I.

Herein, if a meat company cuts and clips, ties and/or string closes the meat casing itself in the process of making its meat products, the machinery and equipment principally used for such manufacturing or processing purpose would qualify for the investment tax credit if the machinery and equipment meets all of the other requirements contained in section 210.12 of the Tax Law and section 5-2 of the Corporation Regulations.

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Accordingly, if Petitioner is principally engaged in the business of cutting and clip, tie and/or string closing meat casings for the meat companies, Petitioner's machinery and equipment used for such manufacturing or processing purpose will qualify for the investment tax credit if the property also meets all of the other requirements contained in section 210.12 of the Tax Law and section 5-2 of the Corporation Regulations.

DATED: January 29, 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.