

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

TSB-M-85 (11)C
Corporation Tax
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Opinion of Counsel
Investment Tax Credit

October 15, 1984

This is in reply to your letter of April 18, 1984. The issue you raise is whether property used by the broadcasting industry in producing films and tapes used in the operation of television stations, and in producing tapes used in the operation of radio stations, would satisfy that criterion for qualification for the investment tax credit, contained in section 210.12(b) of the Tax Law, which requires that the tangible property claimed as the basis for the credit be "principally used by the taxpayer in the production of goods by manufacturing, processing

The term "manufacturing" is defined in that statutory provision 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 has already gone through some artificial process by the use of machinery, tools, appliances and other similar equipment." Neither the statutory provision nor the provision of the Franchise Tax Regulations pertaining thereto provide a definition of the term "processing."

A similar credit is provided for in section 606 of the Tax Law with respect to the Personal Income Tax, section 606(a)(2) repeating verbatim the terms of section 210.12(b)(2). In applying section 606(a)(2), the State Tax Commission has ruled that equipment used in the production of video tapes constitutes equipment used in the production of goods by manufacturing so as to satisfy the production pre-requisite for the investment tax credit. Richard H. Roberts, State Tax Commission Advisory Opinion, TSB-H-81(57)I. It is my opinion that such conclusion is as appropriate with respect to the tax imposed under Article 9-A of the Tax Law as it is to the Personal Income Tax, and is applicable to radio tapes as well as films and video tapes.

The term "processing," while not defined in the statutory provision or regulation here at issue, is defined at 20 NYCRR 527.4(d) (a sales and use tax regulation) as "the performance of any service on tangible personal property for the owner which effects a change in the nature, shape or form of the property." In Continental Terminals, State Tax Commission, TSB-H-82(4)C, the Tax Commission held such definition to be applicable to determinations made under Article 9-A. It appears clear from such definition that the transmutation of raw film to usable video tapes and films, and blank tapes to usable radio tapes, constitutes "processing" within the meaning of section 210.12(b) of the Tax Law. The conversion of raw film or tape into a form suitable for transmission is in effect a form of imprinting. Such procedure has itself been held by the Tax Commission to constitute processing, defined by the Commission as "an operation whereby raw material is subjected to some special treatment, by artificial or natural means, which transforms or alters its form, state or condition." Matter of Multimode, Inc., State Tax Commission, May 20, 1983, TSB-H-83(23)C. See also Matter of Epic Chemicals, State Tax Commission, October 30, 1981, TSB-H-81(59)C.

The view represented herein is given further support by a consideration of the examples given in connection with 20 NYCRR 527.4(d). Thus, it is there held that the term "processing" applies to (1) the development of film by a photographic laboratory, and (2) cutting, editing, sound dubbing and the addition of titles to convert exposed and developed film footage into a completed film. The creating of television films and video tapes, as well as radio tapes, similarly effects changes in the nature and qualities of film and tape, and thus falls under the rubric of "processing".

Accordingly, it is my conclusion that tangible personal property and other tangible property, including buildings and structural components of buildings, [principally] used in the production of films, video tapes and radio tapes for use in broadcasting constitute property used in the production of goods by manufacturing and processing, within the meaning and intent of section 210.12(b) of the Tax Law.

s/John P. Dugan
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