

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

TSB-M-91
(4) Income Tax
(3) Corporation Tax
April 5, 1991

Eligibility of Leased Property for the Investment Tax Credit
Tax Appeals Tribunal Decision
Matter of the "Petition of Hal and Julie Mitnick"

In the decision of Hal and Julie Mitnick (TSB-D-91-(2)I), the Tax Appeals Tribunal held that equipment in the possession of the taxpayers under lease agreements was "acquired by purchase" within the meaning of section 179(d)(2) of the Internal Revenue Code and accordingly was not rendered ineligible for the New York investment credit under section 606(a) of the Tax Law. The Division of Taxation interprets this decision, in harmony with Personal Income Tax Regulation Section 103.1(e) (20 NYCRR Section 103.1(e)), as set forth below.

The mere fact that property is held under a lease is not sufficient to establish whether or not the property has been acquired by purchase, within the meaning of section 179(d)(2) of the Internal Revenue Code. The determinative factor, under Personal Income Tax Regulation Section 103.1(e), is whether the lessee is treated as the beneficial owner of the property for federal income tax purposes. If the lessee is entitled to this in-substance owner treatment, the lease is treated as a sale rather than a rental arrangement, thereby entitling the lessee to a federal depreciation deduction. In this instance, pursuant to the Regulation, the lessee may be entitled to the New York investment tax credit if the property otherwise satisfies the requirements for the credit as provided in section 606(a)(2) of the Tax Law.

Since the law and regulations for the investment tax credit allowable under Article 9-A of the Tax Law (Corporate Franchise Tax) are essentially the same as the personal income tax, this interpretation will also apply for purposes of the 9-A credit.