

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

TSB-A-86 (2) I
Income Tax
April 17, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I840712B

On July 12, 1984, a Petition for Advisory Opinion was received from Emilio A. D'Argenio, CPA, Globe Mall, P.O. Box 720, Watertown, New York 13601.

The issue raised is whether tangible personal property used in a logging operation under circumstances described below qualifies for the investment tax credit provided under Article 22 of the Tax Law.

Section 606(a) of the Tax Law allows an investment tax credit against the personal income tax imposed by Article 22 of the Tax Law with respect to certain tangible personal property. Personal Income Tax regulations section 103.1(c)(1) defines property which qualifies for such credit as tangible personal property and other tangible property which:

"(i) is acquired, constructed, reconstructed or erected by the taxpayer after December 31, 1968;

(ii) is depreciable pursuant to section 167 of the Internal Revenue Code or is recovery property with respect to which a deduction is allowable under section 168 of the Internal Revenue Code;

(iii) has a useful life of four years or more;

(iv) is acquired by the taxpayer by purchase as defined in subsection(d) of section 179 of the Internal Revenue Code;

(v) has a situs in New York State; and

(vi) is 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."

Technical Services Bureau Memorandum TSB-M-80-(1)-I, citing In the Matter of John Boadle, Decision of the State Tax Commission, February 13, 1980, TSB-H-80-(48)-I, states:

...The Investment Tax Credit will be 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.

The Boadle decision involved an individual engaged in a custom farming operation. Mr. Boadle purchased farm machinery such as combines, corn-chopping rigs and plows. He provided various plowing and planting services to farmers in their fields.

Petitioner inquires whether this principle would also be applied to a logging operation under circumstances where an individual purchases logging equipment such as chain saws, loaders and skidders to cut logs and deliver them to a loading area. This service is performed for a paper company which uses the logs as raw materials to produce various paper products. It is assumed, although not stated, that the paper company either owns or rents the property upon which the trees are being cut. It is also assumed, for purposes of this Advisory Opinion, that the property in question meets each of the qualifications contained in paragraphs 103(c)(1)(i) through (v) of the personal income tax regulations.

A paper company would qualify for the investment tax credit with respect to saws, skidders, loaders and other equipment used to cut and move logs if it performed these operations itself since such equipment is used in production. Accordingly, pursuant to TSB-M-80-(1)-I, the individual described in Petitioner's petition will also be allowed the credit for such machinery used to perform such operations for a paper company.

It should be noted that such equipment must be principally (more than 50%) used in production to qualify for the credit. It should also be noted that transportation equipment, such as trucks used to move logs from the logging operations to a mill, will not qualify for the investment credit since such trucks are not used in production.

DATED: January 7, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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