

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

TSB-A-91 (6) I  
Income Tax  
April 29, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I910206B

A Petition for Advisory Opinion was received from John Panos, 5740 Sunset Terrace, Clay, New York 13041.

The issue raised by Petitioner, John Panos, is whether a building and machinery acquired and used in the business of rebuilding starters and alternators qualifies for investment tax credit under section 606(a) of the Tax Law.

Petitioner, John Panos, operates an auto parts business. Petitioner assembles and reconditions starters and alternators for use on motor vehicles. Petitioner's operations consist of two processes. One process involves rebuilding the starters and alternators. In this process, an old non-working starter or alternator is acquired, dismantled and reassembled with new wire and parts into a working item. The old casing of the item is used but new wire and armatures are installed. In the second process, new parts are acquired in quantity and are assembled into new working starters and alternators.

After completion of either process, the working starters and alternators are sold to retail businesses and to large trucking companies for installation on their vehicles.

In 1988 and 1989 the property in question consisted of a building, equipment and tools.

For the taxable years in question, section 606(a) of the Tax Law allowed a credit equal to four percent of the cost or other basis for federal income tax purposes, of tangible personal property and other tangible property, including buildings and structural components of buildings, which:

(1) were acquired, constructed, reconstructed or erected after December 31, 1986;

(2) were depreciable pursuant to section 167 of the Internal Revenue Code (hereinafter "IRC");

(3) had a useful life of four years or more;

(4) were acquired by purchase as defined in section 179(d) of the IRC;

(5) had a situs in New York State; and

(6) were 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.

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Section 606(a)(2) 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 606(a)(2) 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 103.1(d) of the Personal Income Tax Regulations provides that the term "principally used" means more than 50 percent. Furthermore, section 606(a)(4) provides that "[a] taxpayer shall not be allowed a credit under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation."

In deciding whether Petitioner's activities of rebuilding and reconditioning starters and alternators constitutes manufacturing, consideration must be given to the extensiveness of the activities performed on the articles and whether the end products were equivalent in usefulness and treated as freshly and newly produced articles. The court in United States v. J Leslie Morris Co., 124 F2d 371 (9th Cir 1941), with respect to the Federal manufacturers excise tax, observed:

"[T]he question whether the process is essentially one of production or merely of repair is to be resolved by an over-all view of taxpayer's activities, beginning with its acquisition of discarded parts and ending when a useful article of commerce emerges. . .".  
Id. at 372.

For purposes of the investment tax credit, section 606(a) of Article 22 is substantially similar to section 210.12 of Article 9-A. Under Article 9-A, the disassembling, reconditioning and reassembling of telephone sets qualified as manufacturing for purposes of the investment tax credit. Western Electric Co., Inc., Dec St Tax Comm, November 6, 1981, TSB-H-81(60)C.

In accordance with consideration of the factors discussed above and the language of section 606(a)(2) of the Tax Law, the extensive activities performed by Petitioner on the old non-working starters and alternators qualifies as manufacturing for purposes of the investment tax credit. The starters and alternators are clearly given new quality and Petitioner's activities go beyond mere repair: the old starter or alternator is dismantled; all defective components are removed and replaced and the set is reassembled with some of its original parts and some brand-new parts.

Accordingly, both processes of Petitioner's operations constitutes manufacturing for purposes of section 606(a)(2) of the Tax Law. If Petitioner's building, equipment and tools are principally used in such manufacturing and the building, equipment and tools meet all of the other requirements contained in

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section 606(a) of the Tax Law, Petitioner will be allowed an investment tax credit for such property for the taxable year during which such property became qualifying property.

DATED: April 29, 1991

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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