STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition of **GENERAL ELECTRIC COMPANY** for Redetermination of a Deficiency or for Refund of Franchise Tax on Business Corporations under Article 9-A of the Tax Law for the Years 1979, 1980 and 1981.	:	DECISION DTA NO. 802698

Petitioner, General Electric Company, 1 River Road, Schenectady, New York 12345, filed an exception to the determination of the Administrative Law Judge issued on September 11, 1987 with respect to its petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1979, 1980 and 1981 (File No. 802698). Petitioner appeared by Hancock & Estabrook, Esqs. (E. Parker Brown, II, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Thomas C. Sacca, Esq., of counsel).

The petitioner submitted a brief on exception. The Division of Taxation submitted a letter in opposition to the exception. Oral argument was held on March 15, 1988.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Taxation properly determined that the research and development credit did not apply to property acquired, constructed, reconstructed or erected prior to June 30, 1982 by petitioner, General Electric Company.

FINDINGS OF FACT

Petitioner waived a hearing and agreed to submit the case for determination based on the Division of Taxation file, a stipulation of facts and additional information provided to the Administrative Law Judge.

We find the facts as stated in the Administrative Law Judge's determination and such facts are incorporated herein by this reference.

Petitioner, General Electric Company, filed a New York State Combined Franchise Tax Report for the year 1981. On this report, petitioner claimed a research and development credit in the amount of $1,187,914.00 for property acquired during the year 1981.

On July 17, 1985, the Division of Taxation issued three notices of deficiency to petitioner, General Electric Company, which asserted deficiencies of corporation franchise tax under Article 9-A of the Tax Law for the years 1979, 1980 and 1981 for taxes due of, respectively, $687,604.00, $745,146.00 and $2,167,608.00.

At a pre-hearing conference all issues but one were resolved. On June 4, 1986 petitioner withdrew its petition as to the resolved issues, agreeing to pay $198,213.00 in tax, together with $165,236.00 in interest, for a total of $363,449.00. Petitioner paid the amount agreed to of $363,449.00 at the time of its partial withdrawal of petition.

The only issue remaining in dispute involves the research and development tax credit provided for by Tax Law section 210.18, and this issue is present only in the year 1981. The

disagreed portion of tax, in the principal amount of $1,187,914.00, is entirely attributable to the research and development credit issue.

OPINION

Petitioner, General Electric Company, maintains that there was a clear legislative mandate that the research and development credit apply to qualified property placed in service after December 31, 1980. The Division of Taxation maintains that Tax Law section 210.18(a) limits the credit to property acquired, constructed or reconstructed, or erected after June 30, 1982. There is no dispute over the amount of tax in issue.

We reverse the determination of the Administrative Law Judge. The provisions of the statute and documents relating to the intent and purpose of the statute clearly support petitioner's position.

Tax Law Section 210.18 was added by L 1981, ch 103, § 14. Paragraph (a) which enacted the credit originally read as follows:

> "(a) A taxpayer shall be allowed a credit against the tax imposed by this article . . . . The amount of the credit shall be ten 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, described in paragraph (b) of this subdivision; acquired, constructed or reconstructed, or erected after June 30, 1982. (Emphasis added.)

Paragraph (b) which described eligible property originally read as follows:

> "(b) A credit shall be allowed under this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings which are: depreciable pursuant to section 167 of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section 179(d) of the internal revenue code, have a situs in this state and are used or are to be used for purposes of research and development in the experimental or laboratory sense. . . ."

By L 1982, ch 55, § 7, however., Section 210.18(b) was amended and the following emphasized language added:

> "A credit shall be allowed under this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings which are: depreciable pursuant to section 167 of the internal revenue code or recovery property with respect to which a deduction is allowable under section 168 of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section 179(d) of the internal revenue code., have a situs in this state and are used or are to be used for purposes of research and development in the experimental or laboratory sense . . . ."

Section 96 of the same 1982 statute, the effective date section, provided in pertinent part:

> ". . . that [section]. . . 7 . . . shall apply to property placed in service after December 31, 1980, in taxable years ending after such date . . . ." (L 1982, ch 55, § 96, emphasis added.)

On its face the section is at variance with the June 30, 1982 effective date of the credit in paragraph (a) of section 210.18.

The Governor's Memorandum in Support of the bill which became L 1982, ch 55 addressed the relevant effective date as follows:

> "The bill would take effect immediately and apply with respect to taxable years beginning after December 31, 1981, except that the provisions allowing State tax credits for recovery property would apply with respect to taxable years beginning after December 31, 1980."

Additionally, the Tax Department's memorandum titled "1982 Legislation: Amendments to the Research and Development Tax Credit" (TSB-M-82[18]C) provided:

> "Section 7 allows the research and development credit to be taken on qualified property subject to accelerated cost recovery under section 168 of the internal revenue code (ACRS), provided such property was placed in service after December 31, 1980."

Thus, the explicit language of the amending statute, the Governor's Memorandum supporting the amendment, and the Tax Department's own contemporaneous advice to taxpayers all indicate that the research and development credit applies to property placed in service after December 31, 1980.

The argument advanced by the Division is that the June 30, 1982 effective date in section 210.18(a) remained unchanged by the 1982 enactment and thus remains the operative date for the availability of the research and development credit. The Division argues that the December 31, 1980 effective date of the amendment to section 210.18(b) was intended merely to describe the type of property entitled to the credit and that it was not intended to change when the credit was available. We find the argument unpersuasive.

Under such an interpretation, only recovery property acquired, constructed or reconstructed or erected after June 30, 1982 would be eligible for the credit. This result would render meaningless the language of the effective date applying the 1982 amendment to property placed in service after December 31, 1980. Such a construction, which would render this portion of the statute ineffective, must be avoided for a judicial or quasi-judicial body will "not by implication read into a clause of a rule or statute a limitation for which . . . no sound reason [can be found] and which would render the clause futile." (Lederer v. Wise Shoe Co., 276 NY 459, 465.)

The plain fact is that the Legislature clearly expressed its intent that the credit apply with respect to recovery property placed in service after December 31, 1980. When the words of a statute are definite and precise, it is not allowable to go elsewhere in search of conjecture in order to restrict or extend their meaning. (McKinney's Cons Laws of NY, Book 1, Statutes §76.) The intention of a legislature is first to be sought in a literal reading of a statutory provision. (McKinney's Cons Laws of NY, Book 1, Statutes §92[b].) Clear and unambiguous language need not be "interpreted" by use of extrinsic material, but, rather, declares itself. (See, eg., Finger Lakes Racing Assn., Inc. v. State Racing & Wagering Board, 45 NY2d 471, 480

[19781; Mount v. Mitchell, 31 NY 356, 357 [1865]; and Oneida Savings Bank of Oneida v. Tese, 108 AD2d 1042, 1043 (3rd Dept 1985].)

The fact that a date different from "after December 31, 1980" remained in the Tax Law after the Legislature's 1982 amendment is not of consequence.

> "In so far as there is any repugnancy between the original act and the amending act the original must be deemed to have been repealed by the amendment. As the later expression of the legislative will the amendment repeals by implication such provisions as cannot be reconciled with it. This rule is particularly applicable where the later enactment deals specifically with the situation in issue. (Citations omitted.)" (McKinney's Con Laws of NY, Book 1, Statutes §192.)

See also, eg., Abate v. Mundt, 25 NY2d 309, 318 (1969), affd, 403 US 182 (1971); Matter of Harvey v. Finnick, 88 AD2d 40, 48 (4th Dept 1982), affd, 57 NY2d 522 (1982); Matter of Public Service Commn. v. Village of Freeport, 110 AD2d 704, 705 (2nd Dept 1985); and McKinney's Cons Laws of NY, Book 1, Statutes §398.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of General Electric Company is granted;

2. The determination of the Administrative Law Judge is reversed; and

3. The petition of General Electric Company is granted and the Division of Taxation is directed to accordingly modify the notice of deficiency issued on July 17, 1985.

Dated: Albany, New York
September 09, 1988

/s/ John P. Dugan
President

/s/ Francis R. Koenig
Commissioner