

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition

of

:

VOX PRODUCTIONS, INC.

DETERMINATION

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Years 1971, :
1972 and 1973.

Petitioner, Vox Productions, Inc., 211 East 43rd Street, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1971, 1972 and 1973 (File Nos. 13980 and 17001).

A hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 30, 1977 at 9:00 A.M. Petitioner appeared by Choate, Doman, Moore & Hahn (Peter T. Oram, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner is entitled to an investment tax credit under Tax Law § 210.12(b) and optional depreciation treatment under Tax Law § 210.3(e)(4) on the creation of a master tape for use in the production of duplicate tapes, in turn used in the process of creating phonograph records.

FINDINGS OF FACT

1. On July 15, 1976, the Audit Division issued three notices of deficiency to petitioner for the periods ended December 31 of 1971, 1972 and 1973, in the respective amounts of \$1,137.00 plus interest of \$170.55, \$2,323.00 plus interest of \$552.64, and \$2,006.00 plus interest of \$351.86. This resulted in

a total liability of \$6,541.05 for the periods at issue. The deficiencies were based on a disallowance of the investment tax credit under Tax Law § 210.12(b) and the optional depreciation deduction under Tax Law § 210.3(e)(4).

2. Petitioner, Vox Productions, Inc., is a phonograph record and tape cassette publishing company, the principal office of which is in New York City. Petitioner has offices in London and Paris which are concerned exclusively with sales and with contacting performing orchestras and artists.

3. During the period herein involved, petitioner manufactured master tapes from the tapes of actual musical performances. The process by which this was accomplished involved a number of steps, each performed by petitioner within New York State. A conventional tape recording of a musical performance or segments thereof was made in a studio. "Takes" of each segment were made until petitioner was satisfied with the quality of the particular recording. The "takes" which were finally approved by petitioner during the period herein involved were edited, spliced and processed by it, in order to make one definitive performance on a master tape. This process took anywhere from 30 minutes to 80 hours.

4. Immediately after the creation of the master tape, petitioner produced a safety of it. This procedure was designed to insure that in the event of damage occurring to the master tape, a comparable substitute would be available. Neither the master tape nor the safety tape ever left its situs in New York State.

5. Petitioner "dolbyized" each master tape it created during the period herein involved. This process was designed to remove "hiss" or certain undesirable sounds from the master tape recording.

6. Petitioner's master tapes were used to create duplicate tapes, which were in turn employed in the production of the metal stampers that actually stamped out the records.

7. Petitioner did not physically perform every step of the production process during the period herein involved. Subcontractors working under petitioner's supervision were involved in certain manufacturing stages, which occurred after petitioner's creation of the master tape.

8. Petitioner coordinated and scheduled the entire production process and determined the acceptability of work performed in each step of that process.

9. During the period herein involved, petitioner supervised, corrected, approved or rejected the product of each separate process, including those processes performed by subcontractors.

10. Petitioner's name appeared on the label of the final consumer product. The name of petitioner's subcontractors did not so appear.

11. Petitioner alone made an investment in the master tapes, for which it seeks investment credit and/or optional depreciation treatment.

CONCLUSIONS OF LAW

A. That Tax Law § 210.12(b) makes available to the corporate taxpayer an investment tax credit 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 longer, are acquired by purchase as defined in section 179(d) of the Code, have a situs in New York and are principally used by the taxpayer in the production of goods by, ~~inter alia~~, manufacturing, processing, assembling or refining.

B. That Tax Law § 210.12(b) also furnishes a definition of manufacturing for purposes of the credit as follows:

"For purposes of this paragraph, 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."

C. That Tax Law § 210.3(e)(4) provides for an optional depreciation deduction for tangible property meeting the production and manufacturing criteria as set forth in Tax Law § 210.12(b).

D. That processing is 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 Commn., May 20, 1983.)

E. That printing activities involving printing of promotional literature and computer printing of mailing labels have been held to constitute "processing" (Matter of Multimode, Inc., supra). The conversion of raw film or tape into a form suitable for playback or transmission is in effect a form of imprinting. Therefore, the production **of** duplicate tapes using a master tape constitutes "processing" within the meaning of Tax Law §§ 210.12(b) and 210.3(e)(4), and petitioner is entitled to the investment tax credit and optional depreciation deduction for the creation of such master tape.

F. That the petition of **Vox** Productions, Inc. is granted, and the notices of deficiency issued July 15, 1976 are cancelled.

DATED: Albany, New York

OCT 08 1997


ADMINISTRATIVE LAW JUDGE