

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

NEW ERA OIL SERVICE, INC.

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DECISION

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Years
Ended March 31, 1980 and March 31, 1981.

Petitioner, New Era Oil Service, Inc., 402 Parsons Drive, Syracuse, New York 13219, 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 fiscal years ended March 31, 1980 and March 31, 1981 (File No. 41604).

A hearing was held before Timothy J. Alston, Hearing Officer, at the **offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on April 3, 1986 at 10:45 A.M.** Petitioner appeared by Shae C. Riley, C.P.A., and Robert Fagliarone, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether petitioner was entitled to an investment tax credit with respect to certain trucks and trailers, along with engine repairs and replacement parts in connection with such trucks, where such equipment was used in its business.

FINDINGS OF FACT

1. On July 30, 1982, the Audit Division issued to petitioner, New Era Oil Service, Inc., three statements of audit adjustment asserting corporation franchise tax deficiencies under Article 9-A of the Tax Law for the fiscal years ended March 31, 1979, March 31, 1980 and March 31, 1981. The asserted deficiencies

were premised upon the Audit Division's disallowance of an investment tax credit claimed by petitioner with respect to each of the aforementioned periods.

2. On October 6, 1982, the Audit Division issued to petitioner two notices of deficiency asserting additional tax due under Article 9-A of the Tax Law in amounts as follows:

<u>Year Ended</u>	<u>Tax Deficiency</u>	<u>Interest</u>	<u>Balance Due</u>
3/31/80	\$ 443.00	\$132.56	\$ 575.56
3/31/81	\$2,597.00	\$555.19	\$3,152.19

3. The Audit Division did not issue a Notice of Deficiency with respect to petitioner's fiscal year ended March 31, 1979. As a result, the Audit Division conceded that the franchise tax asserted due in the Statement of Audit Adjustment for the fiscal year ended March 31, 1979 be cancelled. The investment tax credit claimed for petitioner's fiscal year ended March 31, 1979 remains relevant to this proceeding, however, because petitioner carried forward a portion of the credit claimed on its return for fiscal year ended March 31, 1979 to fiscal years ended March 31, 1980 and March 31, 1981.

4. Specifically, petitioner claimed an investment tax credit with respect to the following property:

<u>FYE</u>	<u>Description</u>	<u>Amount of Claimed Credit</u>
3/31/79	1973 Fruehauf trailer	\$ 179.00
3/31/79	1973 Fruehauf trailer	\$ 180.00
3/31/79	1974 Ford tractor	\$ 277.00
3/31/79	1977 Brockway	\$1,120.00
3/31/79	1974 Chevy	\$ 360.00
3/31/79	1975 Chevy	\$ 489.00
3/31/79	1977 GMC	\$ 744.00
3/31/79	1977 Chevy	\$ 845.00
3/31/79	1977 Chevy	\$ 845.00
3/31/79	1973 Chevy	\$ 235.00
3/31/80	1977 GMC Tank Truck	\$1,240.00
3/31/80	Engine	\$ 470.00

3/31/80	Equipment repairs	\$ 191.00
3/31/80	Centrifuge	\$ 22.00
3/31/81	Major overhauls of trucks	\$ 223.00

5. The Audit Division allowed petitioner a credit of \$22.00 in connection with its purchase of the centrifuge, but denied in full the balance of the credit claimed by petitioner. The Audit Division's denial of the credit was premised upon its contention that the property purchased by Petitioner was not "directly and principally used in the production of goods by an industrial type of activity such as manufacturing, processing or assembling."

6. Petitioner is and was at all times relevant herein a New York corporation engaged in the business of purchasing "waste" or "junk" oil, removing such oil from tanks at various locations and transporting the oil to its facility where the oil was transferred into other vehicles. The oil was then transported and sold to purchasers who further refined it and, in turn, resold it.

7. Petitioner took the position that the trucks and trailers upon which its investment tax credit claims were based were principally used in processing oil. At hearing, petitioner's representative contended that only two of the vehicles in question were used in transporting oil, while the remaining vehicles were used solely for processing the oil by transferring the oil through filters from the on-road vehicles to the off-road trucks and trailers at petitioner's facility. Petitioner's representatives stated that the filters were located on the vehicle from which the oil was transferred. Petitioner's representatives did not know what the filtration devices consisted of or the manner **in** which such devices were used. Petitioner's representatives contended that certain oil was filtered more than once, but introduced no evidence as to the frequency with which this procedure was performed. Regarding the vehicles which were

evidence was introduced at hearing as to said vehicles' proportion of usage in transporting oil and proportion of usage in filtering oil.

8. At hearing, petitioner's representatives testified **on** petitioner's behalf. Petitioner's representatives had no personal knowledge of the operations described in Findings of Fact "6" and "7". No direct evidence **of** any kind was introduced at hearing on petitioner's behalf.

CONCLUSIONS OF LAW

A. That during the years at issue, section 210.12(b) of the Tax Law provided for a credit against corporation franchise tax with respect to tangible personal property which was depreciable pursuant to section 167 of the Internal Revenue Code; had a useful life of four years or more; was acquired by purchase as defined in section 179(d) of the Internal Revenue Code; had a situs in New York State; and was principally used by the taxpayer in the production **of** goods by manufacturing, processing, or refining. The term "principally used" is defined at 20 NYCRR 5-2.4(c) as "more than 50 percent".

B. That section 1089(e) of the Tax Law provides that "[i]n any case before the Tax Commission commenced under [Article 9-A] the burden **of** proof shall be upon the petitioner," with exceptions not relevant herein. Accordingly, in the matter at issue herein, petitioner bore the burden of proof to show wherein the deficiencies asserted against it were improper (Matter of Reader's Digest Association, Inc. and Subsidiaries v. State Tax Commission, 103 AD2d 926, 927).

C. That in view of Findings of Fact "6", "7", and "8", petitioner has failed to meet the burden of proof imposed upon it pursuant to section 1089(e) of the Tax law. Specifically, petitioner has failed to establish that its trucks were used in the production of goods by manufacturing, processing or refining.

Moreover, even assuming, arguendo, that petitioner's trucks were used, to some degree, in manufacturing, processing or refining, petitioner has failed to establish that such vehicles were "principally used" **in** such a manner within the meaning of 20 NYCRR 5-2.4(c).

D. That except to the extent indicated in Finding of Fact "3" herein, the petition **of** New Era Oil Service, Inc. is denied and the notices **of** deficiency issued to petitioner **on** October 6, 1982 are sustained.

DATED: Albany, New York

STATE **TAX** COMMISSION

OCT 20 1986

Roderick W. Chen
PRESIDENT

Francis R. Koernig
COMMISSIONER

[Signature]
COMMISSIONER