

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

O. MUSTAD & SON (U.S.A.), INC.

DECISION

for Redetermination of a Deficiency or for  
Refund of Corporation Franchise Tax under  
Article 9-A of the Tax Law for the Years 1979  
through 1981.

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Petitioner, O. Mustad & Son (U.S.A.), Inc., P.O. Box 838, Grant Avenue,  
Auburn, New York 13021, 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 1979 through 1981 (File No. 45095).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of  
the State Tax Commission, 333 East Washington Street, Syracuse, New York, on  
July 8, 1985 at 12:30 P.M., with all briefs to be submitted by August 30, 1985.  
Petitioner appeared by Boyle, Anderson, Lipski, McLane & Lynch, P.C. (Robert E.  
Barry, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq.  
(James Della Porta, Esq., of counsel).

#### ISSUE

Whether petitioner is entitled to an investment tax credit on equipment  
utilized in its preparation of fish hooks on the ground that the equipment is  
used in the production of goods by manufacturing, processing or assembling or,  
in the alternative, whether petitioner is entitled to claim the eligible  
business facility credit under section 210.11 of the Tax Law.

FINDINGS OF FACT

1. Petitioner O. Mustad & Son (U.S.A.), Inc. filed State of New York corporation franchise tax reports for the years 1979 through 1981. In each report, petitioner claimed an investment tax credit on equipment it had purchased for use at its plant in Auburn, New York.

2. On March 10, 1983, the Audit Division issued three notices of deficiency to petitioner asserting deficiencies of corporation franchise tax as follows:

<u>Period Ended</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
December 31, 1979	\$ 8,868.61	\$3,426.56	\$12,295.17
December 31, 1980	12,703.23	3,169.02	15,872.25
December 31, 1981	7,194.30	1,196.41	8,390.71

3. Each of the notices of deficiency were issued on the basis that petitioner was not engaged in the production of goods, but was engaged in the acquiring of fish hooks in bulk and packaging the fish hooks for distribution. Accordingly, the Audit Division disallowed petitioner's claim of an investment tax credit.

4. Petitioner is a wholly-owned subsidiary of O. Mustad & Son A/S of Oslo, Norway.

5. On July 1, 1969, petitioner began business in Auburn, New York. At that time, fish hooks which were shipped to it in bulk from its parent, were warehoused and then shipped to customers. A majority of the hooks were sold in quantities of one thousand to manufacturing concerns.

6. In the late 1970's, the decision was made to engage in consumer marketing. As a result of this decision, it was concluded that it would be preferable to perform the last part of the production operation in New York since each hook could be placed into a variety of different packages.

7. In order to manufacture a fish hook at 1 1/2 inches

furnace where the hooks are hardened and tempered. At this juncture, a coating such as nickel, cadmium or gold is added. The hooks are then brought to a packaging area where they are sorted, untangled and inspected.

8. During the manufacturing process the fish hooks become very entangled. The tangled state of the fish hooks arises from the coating process wherein the hooks are tumbled in order to achieve a uniform coating. The hooks are also tangled in the tempering process.

9. Petitioner obtains hooks from its parent in Norway in boxes weighing approximately seventy-five pounds. The hooks **in** these boxes have not been sorted, untangled or inspected and, consequently, remain entangled. They are not marketable in the condition in which they are received by petitioner.

10. When petitioner receives the fish hooks from its parent, it takes a random count of 100 hooks. **If** petitioner finds less than a 1 percent rejection, the hooks will be processed. If a higher rejection rate **is** found, additional inspection is performed to determine whether the hooks will be processed.

11. Prior **to** being processed, all hooks are coated with either an oil or silicone spray. The coating eases the untangling of the hooks and also aids **in** preventing future tangling of the hooks. The coating also helps **in** obtaining a smooth run along a conveyor belt.

12. Upon completion of the inspection and coating steps, petitioner proceeds to untangle the hooks. One means of untangling the hooks **is** by placing them in a machine called a rake. The rake is a constantly moving machine which untangles the hooks. Another method of separating the hooks is through the use of a vibrator which is a round bin-type structure. A third method of separating the hooks is through the use of a shaker or tumbler. **In** this process the hooks are placed in a bin and are rotated by a motor.

hooks. The hooks then come off a rail where they are placed in a vibrator which performs the final separation. Petitioner utilizes three tumblers at its plant in Auburn.

13. Petitioner utilizes a unit known as a polybag machine. This machine contains a shaker or tumbler. The polybag machine also takes plastic film which is in large rolls and cuts it into bags. The machine then places the hooks into the bags. The polybag machine also stamps the species of fish appropriate for the hook on the bag.

14. When the polybag machine is not used, petitioner utilizes a stapling machine which attaches cardboard backing to the bag. The stapling machine also prints information on the cardboard backing and punches a hole in the cardboard.

15. Petitioner sells live bait hooks. The live bait hooks are received in two pieces -- a rod and a hook. The hooks are manually assembled before they are sold.

16. Petitioner has two machines which form sprinter boxes. In this process, flat structures are placed in machinery and transported along a chain-link belt to a plunger. The plunger then forms and locks a box.

17. Petitioner utilizes machines which print and label its products.

18. After the fish hooks are placed in boxes, groups of five boxes are wrapped in plastic and the plastic is shrunk. The shrinking process provides a stronger means of support for shipping purposes.

19. Fish hooks are marketed by petitioner in various quantities. The largest quantity of fish hooks petitioner markets is in boxes of one thousand. Fish hooks are also marketed in quantities of one hundred, fifty and ten. Petitioner markets in excess of fourteen thousand varieties of sizes and packages of fish hooks. When petitioner sells fish hooks in quantities of one thousand, the fish hooks are marketed in boxes of one thousand.

the fish hooks would be disentangled in the same way they would have been if they were sold in smaller packets.

20. The smaller the unit quantities of fish hooks sold, the greater the markup petitioner applies to the fish hooks. The price petitioner charges for the fish hooks includes petitioner's overhead costs, transportation costs, import duty on hooks and profit.

21. Petitioner sells fish hooks primarily to manufacturers and wholesalers of lures. However, petitioner does sell to a limited number of large retailers.

22. There are thirty-nine employees at petitioner's facility in Auburn, New York and twenty-six of these individuals are involved in the processing of hooks. The remaining individuals are involved in ordering and shipping.

23. Petitioner also sells horseshoe nails. Prior to being sold, petitioner assembles horseshoe nail boxes. In this process, flat sheets of cardboard are formed and glued into a box through the use of a machine.

24. On or about June 8, 1978, petitioner applied for a Certificate of Eligibility for New York State franchise tax credits in order to be able to claim the eligible business facility credit. Thereafter, individuals from the Department of Labor and the Department of Commerce indicated that it would be appropriate for petitioner to claim the eligible business facility credit. However, petitioner never received a Certificate of Eligibility.

#### CONCLUSIONS OF LAW

A. That section 210.12(b) of the Tax Law makes available to the corporate taxpayer an investment tax credit with respect to tangible personal property which is depreciable pursuant to section 167 of the Internal Revenue Code, has a useful life of four years or longer, is acquired by purchase as defined in section 179(d) of the Code, has a situs in New York, and is used in the production of income.

the taxpayer in the production of goods by manufacturing, processing, assembling.

B. That section 210.12(b) defines manufacturing as follows:

"...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 petitioner was not engaged in the production of fish hooks by manufacturing, since the processes used by petitioner did not give the fish hooks a new shape, new quality or a new combination (Tax Law §210.12(b)). Moreover, the end result was not significantly different from the raw material so that the operation could be deemed "manufacturing" (see Matter of J. H. Wattles, Inc., State Tax Commission, October 30, 1981).

D. That processing is an operation whereby raw material is subjected to some special treatment, either artificially or naturally, which results in a transformation or alteration of the raw material's form, state or condition (Matter of Hudson Cold Storage & Freezer Corp., State Tax Commission, September 9 1983). Petitioner's activities did not result in an alteration of the form, state or condition of the hooks, and, accordingly, such activities do not constitute processing within the meaning of Tax Law §210.12(b). It appears petitioner and its parent have chosen to segregate their operations whereby the production of the fish hooks would take place in Norway and the activity in New York would essentially consist of marketing.

E. That the machines which create boxes, bags and labels are not used in a production of goods process but rather are used in packaging after the goods (i.e. fish hooks or horseshoe nails) have been manufactured. Accordingly, petitioner is not entitled to claim an investment tax credit on these machines.

F. That section 210.11(a) of the Tax Law provides that a taxpayer who owns or operates an eligible business facility, as defined in section 115 of

the taxpayer, property which qualifies for both the investment tax credit provided for in section 210.12(b) and the eligible business facility credit may be treated as eligible for the investment tax credit or the eligible business facility credit.

G. That section 115(d) of the Commerce Law defines the term "eligible business facility" as a place of business located in an eligible area, which meets the requirements set forth in section 118 of the Commerce Law, and for which a Certificate of Eligibility has been issued by the Job Incentive Board. A facility for which such a certificate is issued shall be deemed an eligible business facility only during the taxable year or as of the taxable status date.

H. That in view of the fact that petitioner did not obtain a Certificate of Eligibility, petitioner is not entitled to a tax credit under section 210.11(a) of the Tax Law.

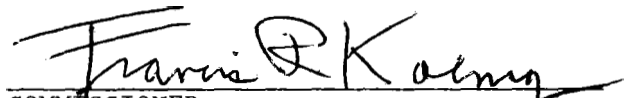
I. That the petition of O. Mustad & Son (U.S.A.), Inc. is denied and the notices of deficiency are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 29 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER