

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL AND LORI JOYNT

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1980.

Petitioners, Paul and Lori Joynt, 7604 Totman Road, North Syracuse, New York 13212, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1980 (File No. 52821).

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 July 10, 1986 at 1:15 P.M., with all briefs to be submitted by July 24, 1986. Petitioners appeared by Daniel J. Arno, Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioners' claim for investment tax credit upon their purchase of a backhoe.

FINDINGS OF FACT

1. Petitioners, Paul and Lori Joynt, timely filed a joint New York State personal income tax return for the year 1980. On their return, petitioners claimed an investment tax credit in the amount of \$935.00 which was premised upon their purchase of a backhoe.

2. On April 5, 1984, the Audit Division issued a Notice of Deficiency to

of \$1,267.85, together with interest and penalty asserted due thereon. Of the additional tax asserted due, \$332.85 plus penalty and interest represented additional unincorporated business tax asserted due by the Audit Division. Petitioners conceded their liability with respect to this portion of the deficiency. Remaining at issue is \$935.00 in additional personal income tax plus interest asserted due by the Audit Division. This deficiency was premised upon the disallowance in full of the investment tax credit claimed by petitioners based upon their purchase of a backhoe. As explained in the Statement of Audit Changes dated December 1, 1983 and issued to petitioners, the Audit Division's denial of credit was premised upon its contention that the backhoe was not "principally used in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing."

3. Petitioners purchased the backhoe, a Model 750 Ford Tractor Loader Backhoe, in November 1980 at a cost of \$29,500.00.

4. In 1980, petitioners owned and operated a construction firm, Lan-Co Development, which was involved in on-site construction, excavation, stripping, grading, hauling, trucking, demolition, landscaping and related construction work.

5. Petitioners purchased the backhoe for use in their construction work. It was used for numerous purposes, but was principally used to dig foundations for commercial structures. It was also often used to dig lines for the laying of sewer and water pipes. Petitioners also used the backhoe to dig culverts.

6. On occasion, the backhoe was used in the excavation of limestone which was then crushed and used for back-filling or as surface **for** parking areas.

7. On many jobs, the topsoil which had been removed in the course of petitioners' excavation work with the backhoe was put through a screener to sift large rocks and other impurities and then replaced. Petitioners then used the backhoe to rough-grade the area and used other equipment to finish grading the area.

8. Petitioners asserted that the uses of the backhoe as described herein met the requirements of the Tax Law with respect to the claimed investment tax credit. Specifically, petitioners contended that the backhoe was used in the production of crushed limestone and refined topsoil by extracting **or** mining. In those instances where the backhoe dug lines for the laying of water and sewer pipes, petitioners contended that the backhoe was part **of** the refining **or** extracting process.

CONCLUSIONS OF LAW

A. That during the period at issue, section 606(a)(2) **of** the Tax Law provided, in pertinent part:

"A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property ...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." (Emphasis supplied.)

B. That the term "principally used" means "more than 50 percent" (20 NYCRR 103.1[d][3]). Petitioners' backhoe would thus be principally used in production if it were used in production more than 50 percent of its operating time (id.)

C. That the principal use of the backhoe was to dig foundations for commercial structures (Finding of Fact "5"). Such use was not a use in the production of goods, but rather was a use involving the provision **of** an excava-

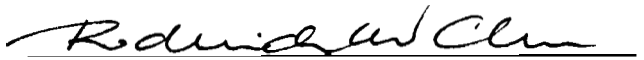
tion service which did not produce goods or result in the production of **goods** within the meaning and intent of Section 606(a)(2) of the Tax Law.

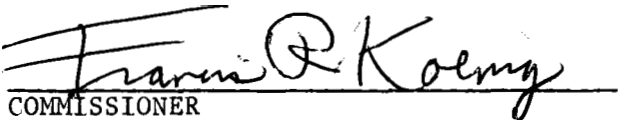
D. That the petition of Paul and Lori Joynt is in all respects denied and the Notice of Deficiency dated April 5, 1984 is in all respects sustained.

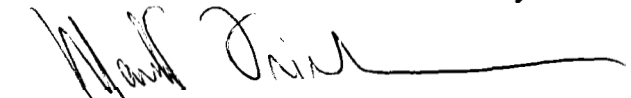
DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT


COMMISSIONER


COMMISSIONER