

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

THEATRE TECHNIQUES ASSOCIATES, INC.

DECISION

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Year
Ended June **30**, 1982.

Petitioner, Theatre Techniques Associates, Inc., P.O. **Box** 335, Shore Road,
Cornwall-on-Hudson, New York 12520, 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 year ended June 30, 1982 (File **No.** 55745).

A hearing was held before Sandra F. Heck, Hearing Officer, at the offices
of the State Tax Commission, Two World Trade Center, New York, New **York** on
May 15, 1986 at 1:45 P.M., with all briefs to be submitted by July **7**, 1986.
Petitioner appeared by Millstein & Company, P.A. (Morton G. Millstein, C.P.A.).
The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., **of**
counsel).

ISSUE

Whether the property upon which petitioner sought an investment tax credit
was used by petitioner principally in the production of **goods** by manufacturing.

FINDINGS OF FACT

1. On September 12, 1984, the Audit Division issued a Notice of Deficiency
against petitioner, Theatre Techniques Associates, Inc., claiming a deficiency
of \$343.00 for the fiscal year ended June 30, 1982 plus interest.

2. **For** the fiscal year ended June **30**, 1981, petitioner claimed an investment

Building	\$10,000.00
Building improvements:	
flooring	1,578.00
roofing	998.00
masonry	163.00
plumbing	746.00
doors	52.00
Forklift	60.00
Tools	165.00

The deficiency at issue represents the amount of the claimed credit carried forward to fiscal year ended June **30**, 1982.

3. Petitioner was a contractor providing stage sets and scenery for Broadway and Off Broadway shows, road companies and other theatrical productions. **It has provided the sets for "Cats", "42nd Street" and "Duet for One".** The Audit Division disallowed petitioner's entire claim for an investment tax credit on the grounds that: (1) The construction of stage sets does not constitute the production of goods by manufacturing, and (2) the property upon which the credit was claimed was leased to petitioner's subcontractors and was thus unavailable to the petitioner with respect to the credit.

4. Petitioner did not actually build stage sets. As a contractor, it prepared competitive bids, executed contracts with theatrical producers for the provision of stage sets, subcontracted with other companies for the actual work involved in building the sets, supervised the work of the subcontractors and remained ultimately responsible for the delivery of the completed sets according to the contract's specifications.

5. Petitioner's primary subcontractors were F.F. Theatrical Services, Inc. ("F.F."), Ebco Construction Company ("Ebco") and Doklo Fabricators, Inc. ("Doklo"). In addition, petitioner was owned entirely by these three corporations.

6. Petitioner entered into written contracts with F.F., Ebco and Doklo **for the construction of sets** December 31, 1981.

set, petitioner used one or all of the subcontractors. Petitioner was entirely responsible for deciding which subcontractor **or** subcontractors to use on a project. If a project called for work outside the expertise of the three primary subcontractors, other parties would be used.

7. The sets were built by F.F., Ebco and Doklo in the building owned by petitioner, upon which the investment tax credit is claimed. The building contained approximately 65,000 square feet. About 75 percent of the space was used by the subcontractors for storage of tools and materials and construction of the sets. Ten percent was used by petitioner for storage of tools and materials. The remainder **was** used by petitioner for office space and other miscellany.

8. There were no formal leases or written rental agreements between petitioner and its subcontractors, but there was what petitioner's comptroller described as "sharing of the costs". Petitioner paid the mortgage **on** the building as well as insurance and maintenance costs. F.F., Ebco and Doklo paid petitioner an agreed upon amount each month and contributed to the upkeep of the building, real estate taxes and insurance as needed. It is petitioner's position that F.F., Ebco and Doklo were the owners of the building because they were petitioner's shareholders.

9. Petitioner's subcontractors built the stage sets, consisting **of** scenery, backdrops, furniture, props, etc. on a platform called an operating deck. The sets were built from wood, steel, plastic and other materials to give whatever appearance the designer desired. When a set was completed, it was disassembled, usually by petitioner, and the pieces, including the operating deck, were shipped to the appropriate theater. The operating deck was laid on **top of the theater's stage** and th

If the location of a show changed, petitioner disassembled the set, transported the pieces and reassembled the set in a new location. At times, all or part of the assembly and disassembly of sets was done by the employees of the theatrical producer.

CONCLUSIONS OF LAW

A. That Tax Law 5210.12 allows a taxpayer a credit against tax with respect to qualified production facilities acquired or constructed after December 31, 1968. Tangible property, including buildings and structural components, qualifies for the credit if, among other things, it is principally used by the taxpayer in the production of goods by manufacturing, processing or assembling (Tax Law §§210.12[a][b]).

B. That 20 NYCRR 5-2.4(c) provides as follows:

"The term principally used means more than 50 percent. A building or addition to a building is principally used in production where more than 50 percent of its usable business floor space is used in storage and production. Floor space used for bathrooms, cafeterias and lounges is not usable business floor space. Space used for offices, accounting, sales and distribution is not used in production.

C. That the investment tax credit is not available with respect to property leased to any other person or corporation; furthermore, "any contract or agreement to lease or rent or for a license to use such property shall be considered a lease" (Tax Law § 210.12 [d]). Accordingly, the agreement between petitioner and each of its subcontractors to "share the costs" of the building constituted a lease within the meaning and intent of Tax Law § 210.12(d), causing approximately 75 percent of the floor space of the building and related improvements used by the subcontractors to be unavailable for the credit. Even if the remaining 25 percent of the floor space was used by petitioner in the production of goods, this would not satisfy the requirement that such a building

be "principally used by the taxpayer in the production of **goods**" (Tax Law § 210.12[b]).

D. That Tax Law §210.12(b) defines manufacturing as "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." Petitioner's own activities merely included assembly, disassembly and transportation of sets after they were completed. These activities did not give "new shape," "new quality" or "new combinations" to the already completed product. Therefore, the forklift and other tools used by petitioner to assemble and disassemble sets do not qualify for the credit.


E. That inasmuch as the construction of the stage sets was done by petitioner's subcontractors and not by petitioner, it is unnecessary to determine whether or not such activity constitutes the production of goods by manufacturing assembling or processing.

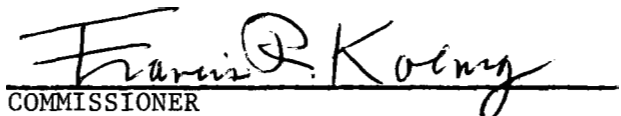
F. That the petition of Theatre Techniques Associates, Inc. is denied, and the Notice of Deficiency issued on September 12, 1984 is sustained.

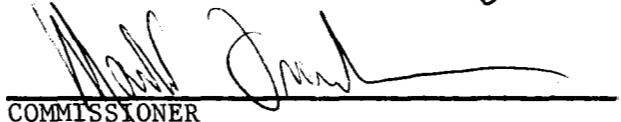
DATED: Albany, New York

STATE TAX COMMISSION

NOV 14 1986


PRESIDENT


COMMISSIONER


COMMISSIONER