

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES R. WATKINS AND CHRISTINE R. WATKINS

DECISION

for Redetermination of a Deficiency **or** for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1981.

Petitioners, Charles R. Watkins and Christine R. Watkins, 7 Davison Lane West, West Islip, New York 11795, 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 1981 (File No. 56559).

Petitioners have waived a hearing and submitted their case for decision based on the entire file. After due consideration of the file, the Commission renders the following decision.

ISSUE

Whether petitioners' claimed investment tax credit for 1981 was properly disallowed by the Audit Division.

FINDINGS OF FACT

1. Petitioners, Charles R. Watkins and Christine R. Watkins, timely filed a joint New York State Income Tax Resident Return (Form IT-201) for 1981. Included with petitioners' filing for 1981 was Form IT-212, by which petitioners claimed an investment tax credit in the sum of \$1,669.00.

2. The above-noted credit was calculated as five percent of the \$33,384.00 cost of a 1964 forty-one foot Hatteras fishing vessel acquired by petitioners on November 16, 1981.

3. On their tax return (Form IT-201), petitioners listed their occupations as "airline pilot" and "housewife", respectively. In claiming the investment credit on Form IT-212, petitioners listed "charter fishing" as the kind of business wherein the fishing vessel giving rise to the claimed credit was used. Also, on Schedule C (Profit or Loss From Business or Profession), as filed with their 1981 return and pertaining to the use of the fishing vessel, petitioners listed their main business activity as "services" and their product as "charter fishing".

4. On April 11, 1984, the Audit Division issued to petitioners a Statement of Audit Changes reflecting additional personal income tax due for 1981 in the amount of \$1,669.00, plus interest, together with the following explanation:

"[s]ince the boat claimed on Form IT-212 is used for charter fishing and not commercial fishing as stated in the New York State Tax Law, your investment credit has been disallowed."

5. On October 4, 1984, the Audit Division issued to petitioners a Notice of Deficiency asserting additional personal income tax due for 1981 in the amount of \$1,669.00, plus interest.

6. Petitioners timely protested the above Notice of Deficiency, maintaining the position that charter fishing is the equivalent of commercial fishing thus entitling petitioners to the claimed investment credit at issue herein.

CONCLUSIONS OF LAW

A. That Tax Law section 606(a) provides for a credit against personal income tax, based on the cost or other basis of:

"...tangible personal property and other tangible property, including buildings and structural components of buildings, which are depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, . . .


B. That there is no evidence **to** indicate the fishing vessel used in petitioners' charter fishing business was used in the production of goods as in commercial fishing. In fact, petitioners' Schedule C lists "services" (presumably making the vessel available for the purpose **of** sport fishing) as petitioner's main business activity (~~see~~ Finding **of** Fact "3"). Accordingly, the Audit Division's denial **of** petitioners' claimed investment credit was proper.

C. That the petition of Charles R. Watkins and Christine R. Watkins is hereby denied and the Notice of Deficiency dated October 4, 1984 **is** sustained.

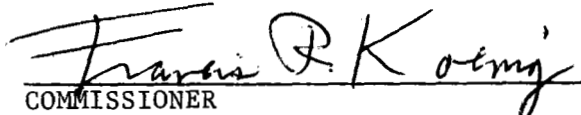
DATED: Albany, New York

STATE TAX COMMISSION

JUL 03 1986



PRESIDENT



COMMISSIONER



COMMISSIONER