

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DOBBINS & RAMAGE, 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, Dobbins & Ramage, Inc., 99 West Avenue, Lyndonville, New York 14098, 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. 59566).

A hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on February 5, 1987 at 9:15 A.M. Petitioner appeared by Thomas J. Swift, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's claim for investment tax credit with respect to certain equipment used in the grading, assembling and controlled-atmosphere storage of apples.

FINDINGS OF FACT

1. Petitioner, Dobbins & Ramage, Inc., filed a New York State Corporation Franchise Tax Report for its fiscal year ended June 30, 1982. On its report, petitioner claimed an investment tax credit of \$4,459.04 for certain equipment used, as set forth in the report, in "processing". Also claimed in the report

was \$13,578.06 in unused investment tax credit available to be carried forward to future periods.

2. By Statement of Audit Adjustment, dated September 15, 1985, the Audit Division disallowed \$3,954.87 of petitioner's claimed investment tax credit. This disallowance resulted in a deficiency of \$979.63 for the fiscal year ended June 30, 1982. The Audit Division issued a Notice of Deficiency on February 13, 1985, asserting tax of \$979.63, plus interest of \$334.90, for a total amount due of \$1,314.53. To this amount the Audit Division applied \$1,314.53 in credit from petitioner's report for its fiscal year ended June 30, 1980. The balance due for the fiscal year at issue in the February 13, 1985 notice was, -therefore, zero.

3. Petitioner **is** and was at all times relevant herein a New York corporation engaged in the production of apple juice and the packaging and marketing of whole apples. Petitioner did not grow its **own** apples, but rather purchased apples **or** received them on consignment from growers. When received by petitioner, the apples were in "tree-run" condition; that **is**, before removal of pesticides, dirt, leaves and stems. Upon receipt, petitioner assembled and graded the apples according to size and quality. Petitioner disposed of the poor quality apples. The apples were then placed in atmosphere-controlled, sealed storage rooms which served to retard their spoilage, thereby lengthening the life of the apples. When needed, petitioner removed the apples from the storage rooms and cleaned them. Petitioner then bagged the higher graded apples for sale. **The remaining apples were sent, after cleaning, to be processed into apple juice.**

4. The equipment for which the Audit Division denied petitioner's claimed credit included grading and assembling equipment, such as pallet boxes and conveyor belts, which served to sort the apples according to size and quality.

Also claimed was equipment used to operate the atmosphere-controlled storage rooms.

5. During the period at issue, petitioner spent 70 percent of its productive time in connection with its sale of whole apples and 30 percent of its time in connection with the production of juice. During the same period, the dollar volume of sales was divided between 60 percent whole apples and 40 percent apple juice

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 and other tangible 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 processing. With respect to the aforementioned requirements, the sole issue herein is whether the property in question was principally used in the production of goods by processing.

B. That 20 NYCRR 5-2.4(b) defines "principally used" for purposes of Tax Law § 210.12(b) as "more than 50 percent".

C. That the Audit Division properly denied petitioner's claimed investment tax credit herein. In view of Finding of Fact "5", the equipment at issue was principally used in the marketing and sale of fresh apples. Petitioner's activities in grading, assembling, storing and cleaning apples to be sold as fresh did not constitute the production of goods by processing within the meaning of section 210.12(b) of the Tax Law. Processing is an operation whereby raw material is subjected to some special treatment, by artificial or natural means, which transforms or alters its form, state or condition (~~see~~


John Georgallas Banana Distributors of New York, Inc., State Tax Commission, November 9, 1984). The apples sold by petitioner herein were not **so** significantly different from the "tree-run" apples received by petitioner that the treatment accorded the apples **may** be deemed "processing" (~~see~~ Matter of J. H. Wattles, Inc., State Tax Commission, October 30, 1981).

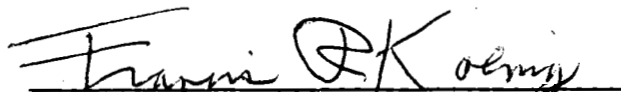
D. That the petition of Dobbins & Ramage, Inc. **is** in all respects denied and the Notice of Deficiency, dated February 13, 1985, **is** sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 20 1987


PRESIDENT


COMMISSIONER


COMMISSIONER