

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

BRYANT FRASER

DECISION

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

Petitioner, Bryant Fraser, 129/ Third Avenue, New York, New York 10021,
filed a petition for redetermination of a deficiency or tor refund of personal
income tax under Article 22 of the Tax Law for the year 1981 (File No. 60167).

A nearing was held before Frank A. Landers, Hearing Officer, at the
offices of the State Tax Commission, Two World Trade Center, New York, New
York, on April 30, 1987 at 10:45 A.M. Petitioner appeared pro se. The Audit
Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether the investment tax credit claimed by petitioner on the purchase of
a computer was properly disallowed by the Audit Division.

FINDINGS OF FACT

1. petitioner, Bryant Fraser, filed a New York State Resident Income Tax
Return for the year 1981 wherein he claimed an investment tax credit of \$182.00
arising from the purchase of an Apple computer.

2. On April 5, 1985, the Audit Division issued a Notice of Deficiency to
petitioner asserting a deficiency of personal income tax tor the year 1981 in
the amount of \$181.69, plus interest of \$65.21, for a balance due of \$246.90.
The Statement of Audit Changes, which had previously been issued, explained
that the Notice of Deficiency was based upon the Audit Division's position that

the computer was not used in the production of goods and therefore was not eligible for the investment tax credit.

3. During the year in issue, petitioner received assignments from Digital Masters, Inc. ("Digital") to create computer software programs. Petitioner used his computer to make a master copy of the software he designed.

4. In 1983, petitioner entered into a contract to provide Digital with a program he designed. The contract provided that Digital would have an exclusive license to publish and market copies of the program. Petitioner agreed to provide copies of the program on disks using his computer until such time that Digital obtained an equivalent computer at which time Digital would produce the copies. In exchange for providing the designated program, petitioner received royalty income.

5. Digital created the copies of the program.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law § 606(a)(2), an individual is entitled to an investment tax credit with respect to tangible personal property which is depreciable pursuant to I.R.C. § 167, has a useful life of four years or longer, is acquired by purchase as defined in I.R.C. § 179(d), has a situs in New York and is "principally used by the taxpayer in the production of goods by manufacturing, processing, assembling...."

B. That Tax Law § 606(a)(2) also provides:

"For purposes of this paragraph, manufacturing shall mean 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 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 (Matter of Continental Terminals, Inc., State Tax Commn., March 5, 1982).

D. That as Governor Rockefeller stated in a memorandum accompanying his approval of the bill containing the investment tax credit at issue herein:

"(1) It will encourage the modernization of antiquated production facilities, and make New York a more attractive location for manufacturers..." (emphasis added) (1969 McKinney's Session Laws of New York at p. 2576).

E. That although an investment tax credit may be allowed on the purchase of a computer (e.g. Matter of Multimode, Inc., State Tax Commn., May 20, 1983, wherein an investment tax credit was allowed on the purchase of a computer which was used to print mailing labels), petitioner has not sustained his burden of proof of establishing that computer in issue was principally used in the production of goods by manufacturing, processing, etc., within the meaning of those terms as found in Tax Law § 606(a)(2). Therefore, petitioner may not be allowed an investment tax credit (of Matter of Quantum Computer Service, Inc., State Tax Commn., September 9, 1983, wherein an investment tax credit arising from the purchase of a keypunch machine was disallowed under Tax Law § 210[12][b]; See also Reader's Digest Association, Inc. v. State Tax Commission, 103 AD2d 926).

F. That the petition of Bryant Fraser is denied and the Notice of Deficiency, dated April 5, 1985, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 12 1987

Richard A. Allen
PRESIDENT

Frank R. King
COMMISSIONER

W. G. J.
COMMISSIONER