

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

NICHOLAS V. FINDLER AND CATHERINE FINDLER : 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, Nicholas V. Findler and Catherine Findler, 7402 East Ironwood Court, Scottsdale, Arizona 85258, 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. 60265).

On September 12, 1986, petitioners waived a hearing and submitted their case for decision by the State Tax Commission based **on** the entire file. After due consideration of the file, the Commission renders the following decision.

ISSUE

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

FINDINGS OF FACT

1. Petitioners, Nicholas V. Findler and Catherine Findler, husband and wife, timely filed a New York State Income Tax Resident Return (Form IT-201) for 1981, under filing status "3" (Married filing separately **on** one return).

Included with petitioners' filing for 1981 was Form IT-212, by which petitioner Nicholas V. Findler claimed an investment credit in the sum of \$232.74.¹

2. The manner of calculating the above-noted investment credit was not specified on said Form IT-212, nor was information concerning the asserted by qualified property upon which the credit was claimed provided on such form.

3. On June 18, 1984, in response to an Audit Division inquiry, petitioner provided the following information relative to the aforementioned claimed investment credit:

"(1) In addition to my position of Professor of Computer Science at the State University of New York in Buffalo, I also engaged in consulting and computer software production. As recognized by the United States legal system, the latter represents the '...manufacturing, processing, assembling, refining of goods...', namely that of tangible information, as done in general by the computer industry.

(2) The location of the investment credit property was in my home office, as approved by the Federal Internal Revenue Service on several occasions. The additional income generated in the home office has always exceeded the costs incurred in the home office.

(3) The following table answers the rest of the questions:

<u>Description of Property</u>	<u>Principal Use</u>	<u>Date Acquired</u>	<u>Life (Years)</u>	<u>Costs</u>	<u>Rate</u>	<u>Investment Credit</u>
Three piece thermopane window	Replacing glass louvre in home office	May 1981	15	1,483.00	4%	\$ 59.32
Electric typewriter	Reports	June 1981	5	313.00	5%	15.65
Computer terminal (+ shipping)	Inform. Processing	July 1981	5	540.00	5%	27.00
Alarm system	Protect hardware	" "	5	1,248.00	5%	62.40

1 The petition in this matter was filed jointly by Mr. and Mrs. Findler. However, since the Findlers filed separate returns (on one form) and since the Notice of Deficiency herein was issued to Nicholas V. Findler, it is appropriate that all references to petitioner(s) shall be solely to Nicholas V. Findler.

Bookshelves, chairs	Home office	--	"	5	911.00	5%	45.55
Voltage stabilizer/ battery system	" "	"	"	"	255.00	5%	12.75
Drapes	" "	"	"	"	202.00	5%	10.10
Extension cords	" "	"	"	"	14.00	5%	0.70
Thermocouple	" "	"	"	"	8.00	5%	0.40
Total							\$233.87

The above amount is slightly more than the one reported, \$232.74, because the last two items were originally not included."

4. On August 7, 1984, the Audit Division issued to petitioner Nicholas V. Findler a Statement of Audit Changes reflecting a proposed personal income tax deficiency for 1981 in the amount of \$421.78, plus interest. This proposed deficiency was based upon disallowance of petitioner's claims for an investment credit of \$232.74 and a resident credit of \$55.69, and upon limiting a capital loss claimed by petitioner to \$1,500.00.

5. On April 5, 1985, the Audit Division issued to petitioner Nicholas V. Findler a Notice of Deficiency asserting personal income tax due for 1981 in the amount of \$366.09, plus interest. This deficiency reflects an amount due which is less than that shown on the aforementioned Statement of Audit Changes because, based on correspondence, the Audit Division conceded and allowed petitioners' claimed resident credit thus eliminating \$55.69 from the originally proposed deficiency.

6. As the result of a pre-hearing (pre-submission) conference, the Audit Division conceded that the \$1,500.00 limitation did not apply to petitioner's claimed capital loss and that the entire loss, as originally reported, was

allowable. Accordingly, the only issue remaining for resolution is petitioner's claim for investment credit (~~see~~ Finding of Fact "3").

7. As noted in Finding of Fact "3", it is petitioner's position that the items in question should be qualified items for purposes of the investment credit in that such items are principally used in the processing of tangible information in the manner performed, in general, in the computer industry.

CONCLUSIONS OF LAW

A. That Tax Law § 606(a)(2) 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 or commercial fishing." (Emphasis added).


B. That petitioner ~~is~~ not engaged in the production of goods by manufacturing, processing, etc., within the meaning and intent of such terms as used in Tax Law § 606(a). Thus petitioner is not entitled to an investment credit as claimed on the items specified in Finding of Fact "3". (Matter of Quantum Computer Services, Inc., State Tax Commn., September 9, 1983).

C. That the petition of Nicholas V. Findler and Catherine Findler is granted to the extent that the Notice of Deficiency dated April 5, 1985 is to be modified insofar **as** to eliminate that portion of the asserted deficiency arising from the capital loss limitation as conceded by the Audit Division at conference (~~see~~ Finding of Fact "5"); the petition is in all other respects denied and the Notice of Deficiency, as modified, is sustained.

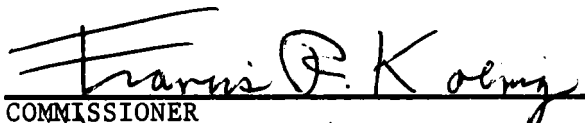
DATED: Albany, New York

STATE TAX COMMISSION

JAN 09 1987



PRESIDENT



COMMISSIONER



COMMISSIONER