

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM BRENT

DECISION

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

Petitioner, William Brent, 2760 Gateway, North Bellmore, New York 11710,
filed a petition for redetermination of a deficiency or for refund of New York
State personal income tax under Article 22 of the Tax Law for the year 1981
(File No. 60669).

A hearing was held before James Hoefer, Hearing Officer, at the offices of
the State Tax Commission, Two World Trade Center, New York, New York, on
April 28, 1987 at 1:15 P.M. Petitioner appeared pro se. The Audit Division
appeared by John P. Dugan, Esq. (Irwin A. Levy, **Esq.**, of counsel).

ISSUE

Whether the Audit Division properly disallowed the investment tax credit
claimed by petitioner on his automobile.

FINDINGS OF FACT

1. Petitioner herein, William Brent, timely filed a New York State
Resident Income Tax Return for 1981 whereon he claimed an investment tax credit
of \$384.00. Mr. Brent, a self-employed certified public accountant, claimed
the investment tax credit on an automobile which was purchased in March of 1981
and which was used in his business activities as an auditor.

2. On February 25, 1985, the Audit Division issued a Statement of Audit Changes to petitioner for 1981 which contained the following explanation:

"Investment tax credit you claimed has been disallowed because your kind of business as an auditor **is** considered a service entity. The assets are not used **in** the production of goods by manufacturing, processing, assembling, etc.

Automobiles, trucks and other transportation vehicles or equipment used **on** public roads are not considered qualified property for New York State investment credit purposes.

ADDITIONAL PERSONAL INCOME TAX DUE \$384.00"

3. Based **on** the aforementioned Statement of Audit Changes, the Audit Division, **on** April 5, 1985, issued a Notice of Deficiency to petitioner for 1981. Said notice asserted additional tax due of \$384.00, plus interest of \$137.84, for a total allegedly due **of** \$521.84.

4. It **is** petitioner's position that section 606(a)(2) of the Tax Law arbitrarily and unconstitutionally discriminates against all taxpayers **in** the service industry since said section only allows an investment tax credit to be claimed on tangible personal property which **is** principally used in the production **of** goods.

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...which are...p 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."

B. That in the instant matter, petitioner's automobile was clearly not principally used **in** the production of goods and, therefore, the Audit Division properly disallowed Mr. Brent's claim for investment tax credit **on** said automobile.

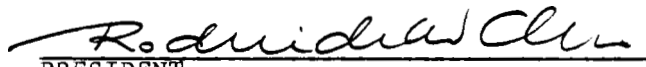
C. That the constitutionality of the laws of the State of New York are presumed at the administrative level.

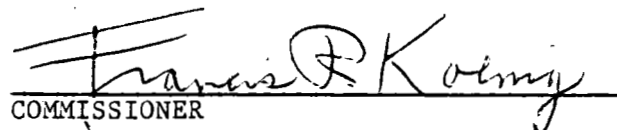
D. That the petition of William Brent is denied in its entirety and the Notice of Deficiency dated April 5, 1985 is sustained, together with such additional interest as may be lawfully due and owing.

DATED: Albany, New York

STATE TAX COMMISSION

JL 0 11987


PRESIDENT


COMMISSIONER


COMMISSIONER