

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition

of

ROBERT A. GOLDMAN AND SANDRA R. GOLDMAN

DETERMINATION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1982 and 1983.

Petitioners, Robert A. Goldman and Sandra R. Goldman, 1304 Roosevelt Avenue, Pelham Manor, New York 10803, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1982 and 1983 (File No. 66075).

A hearing was held before Joseph W. Pinto, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 29, 1987 at 10:45 A.M. Petitioners appeared by Marlin, Klein, Bier, Brown & Mersel, P.C. (Steven Klein, CPA). The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether an investment tax credit, provided for in Tax Law § 210.12-A, taken by petitioners on their 1982 and 1983 New York State resident income tax returns was properly disallowed.

FINDINGS OF FACT

1. On May 10, 1985, the Audit Division issued a Statement of Audit Changes to petitioners, Robert and Sandra Goldman, with regard to their 1982 and 1983 New York State resident income tax returns. The explanation of said audit changes was stated as follows:

"There is no provision in the New York State Tax Law allowing the additional investment tax credit for personal income tax purposes."

The statement set forth the following calculation of the additional tax alleged to be due:

	<u>1982</u> <u>Wife</u>	<u>Husband</u> <u>1983</u> <u>Wife</u>	<u>Total</u>
Investment Credit Claimed	\$245.00	\$453.00	\$923.00
Investment Credit Allowed	<u>69.56</u>	<u>226.98</u>	<u>453.97</u>
Investment Credit Disallowed	\$175.44	\$226.02	\$469.03
PERSONAL INCOME TAX DUE	\$175.44	\$226.02	\$469.03
			\$870.49

Additional interest was stated as \$116.87 for a total amount due of \$987.36.

2. On October 29, 1985, two notices of deficiency were issued to Robert A. Goldman and Sandra R. Goldman with regard to their 1982 and 1983 income tax returns. The Notice of Deficiency with regard to Assessment Number A8505100612 stated additional tax due for 1983 of \$226.02 and interest of \$37.61, for a total amount due of \$263.63. The Notice of Deficiency issued with regard to Assessment Number A8505100611 stated additional tax due for 1982 and 1983 of \$644.47 and interest of \$126.89, for a total amount due of \$771.36.

3. Petitioners were shareholders in a subchapter S corporation for Federal and State income tax purposes for the tax years in question, 1982 and 1983. The corporation, Inflation Systems, Inc., was in the business of manufacturing.

4. For both tax years in question, petitioners reported investment credits which they allege should have flowed through from the corporation to them as shareholders. Said investment credits are set forth on Forms 201-ATT, Summary of Other Credits and Taxes, attached to both the 1982 and 1983 New York State resident income tax returns. The totals listed by petitioners included

an additional credit equal to 50 percent of the credit allowable under Tax Law § 210.12.

5. It is petitioners' contention that Tax Law § 210.12-A, which provides for the additional tax credit, applies to subchapter S corporations such as their own. Petitioners further reason that since the credit is allowed to a corporation and this ~~is~~ a qualified subchapter S corporation, the credit should pass through to the stockholders.

6. Inflation Systems, Inc. became a subchapter S corporation for New York State purposes in the first year the election was permitted, 1981.

CONCLUSIONS OF LAW

A. That Tax Law § 209.8 states, in pertinent part, as follows:

"For any taxable year beginning on or after January first, nineteen hundred eighty-one, a taxpayer which has made an election under subchapter s of chapter one of the internal revenue code shall not be subject to the tax under this article if every shareholder of such taxpayer elects to be taxed under article twenty-two of this chapter pursuant to section six hundred sixty of this chapter."

That, in fact, petitioners did elect to be taxed under Article 22, Chapter 60 of the Tax Law pursuant to Tax Law § 660.

B. That, with respect to tax year 1982, Tax Law § 606(a) (former [9]) provided as follows:

"In the case of a shareholder of a corporation which is an electing small business corporation for federal income tax purposes, where the election provided for in section six hundred sixty of this article has been made, the credit allowed under this subsection shall be allowed to such shareholder with respect to property described in paragraph two of this subsection which was acquired by such corporation."

The credit referred to in Tax Law § 606(a)(2) referred to investment credits with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: (a) depreciable pursuant to Internal Revenue Code § 167 or recovery property with respect to

which a deduction is allowable under Internal Revenue Code § 168, (b) have a useful life of four years or more, (c) are acquired by purchase as defined in Internal Revenue Code § 179(d), (d) 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, vitaculture or commercial fishing. The provisions of Tax Law § 606(a)(2) are identical to those provided for in Tax Law § 210.12(b).

C. That the Tax Law in effect for tax year 1983 contained the same provisions as those outlined above in Tax Law §§ 210.12(b) and 606(a)(2). Also present and in effect during both years was Tax Law § 210.12-A which contained a provision for an additional credit equal to 50 percent of the credit allowable under Tax Law § 210.12.

D. That Tax Law § 606(i)(1), in effect during tax year 1983, stated, in pertinent part:

"In the case of a shareholder of an s corporation where the election provided for in subsection (a) of section six hundred sixty is in effect, there shall be allowed a credit against the tax imposed by this article after allowance of any other credit provided under this section and any credits permitted under sections six hundred twenty, six hundred twenty-one and six hundred forty. The amount of the credit shall be his pro rata share of the credits under subdivisions twelve, seventeen and eighteen of section two hundred ten of this chapter determined for the corporation for which such election is in effect, for the corporation's taxable year ending with or within the shareholder's taxable year."

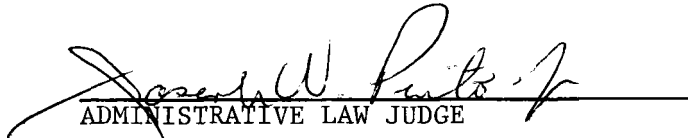
E. That Tax Law § 209.8 provides that a taxpayer, which is an S corporation for Federal income tax purposes, shall not be subject to tax under Article 9-A of the New York Tax Law for any taxable year for which **an** election is in effect pursuant to Tax Law § 660(a). An election pursuant to Tax Law § 660 is an election to be taxed on an individual level pursuant to Article 22 of the Tax Law and as such only those credits which are delineated under Article **22** of the

Tax Law can be utilized by petitioners. It is clear from those sections of the Tax Law in effect during the tax years 1982 and 1983 outlined above, i.e., section 606(a)(9), 606(a)(2) (1982), and section 606(i)(1) (1983), that there is no provision for the pass through of the additional investment tax credit provided in section 210.12-A.

F. That the petition of Robert A. Goldman and Sandra R. Goldman is denied and the two notices of deficiency issued October 29, 1985 are hereby sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 24 1987


ADMINISTRATIVE LAW JUDGE