

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
J.H. Wattles, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Years Ended 9/30/72, 9/30/73 & 9/30/74. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon J.H. Wattles, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J.H. Wattles, Inc.
92 Niagara Frontier Food Terminal
Buffalo, NY 14206

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
30th day of October, 1981.

James A. Hayslund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
J.H. Wattles, Inc. :

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Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Years Ended 9/30/72, 9/30/73 & 9/30/74.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon Harry G. Brown the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

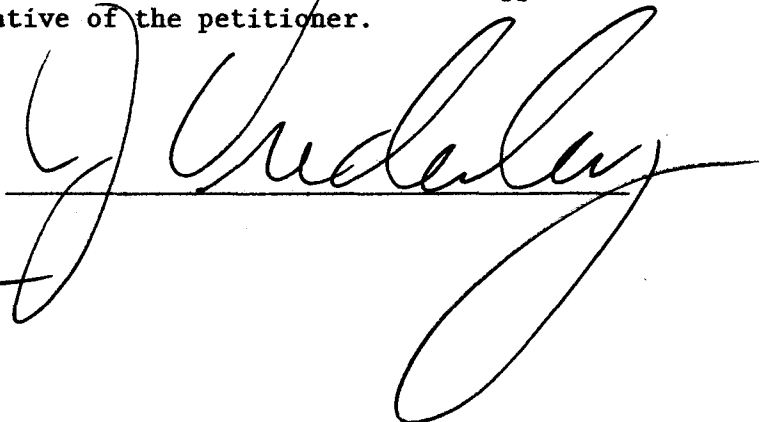
Harry G. Brown
Beckman, Banberg & Brown
2005 Sheridan Dr.
Buffalo, NY 14223

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
30th day of October, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 30, 1981

J.H. Wattles, Inc.
92 Niagara Frontier Food Terminal
Buffalo, NY 14206

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Harry G. Brown
Beckman, Banberg & Brown
2005 Sheridan Dr.
Buffalo, NY 14223
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

J. H. WATTLES, INC.

DECISION

for Redetermination of a Deficiency or
for Refund of Franchise Tax on Business
Corporations under Article 9-A of the
Tax Law for the Fiscal Years Ended
September 30, 1972, 1973 and 1974.

Petitioner, J. H. Wattles, Inc., 92 Niagara Frontier Food Terminal, Buffalo, New York 14206, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal years ended September 30, 1972, 1973 and 1974 (File No. 13982).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on August 17, 1977 at 10:45 A.M. Petitioner appeared by Beckman, Bamberg & Brown, CPA's (Harry G. Brown, CPA). The Audit Division appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether petitioner was entitled to investment tax credit on the purchase of various equipment used in its wholesale egg business.

FINDINGS OF FACT

1. On October 30, 1975, the Audit Division issued three notices of deficiency, with accompanying statements of audit adjustments, which asserted against J. H. Wattles, Inc. deficiencies in franchise tax, scheduled as follows:

| <u>FYE</u> | <u>TAX</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|------------|---------------|-----------------|---------------|
| 9/30/72 | \$138.72 | \$23.92 | \$162.64 |
| 9/30/73 | 141.00 | 19.81 | 160.81 |
| 9/30/74 | <u>122.08</u> | <u>8.00</u> | <u>130.08</u> |
| | \$401.80 | \$51.73 | \$453.53 |

The Division disallowed petitioner's claims for investment tax credit for each of the aforementioned fiscal years on the ground that the items for which credit was claimed were "not used in the production of goods by manufacturing."

2. (a) During the fiscal year ended September 30, 1972, petitioner placed the following tangible personal property into service at its facilities:

| <u>DESCRIPTION</u> | <u>DATE ACQUIRED</u> | <u>LIFE</u> | <u>COST</u> |
|---|----------------------|-------------|-------------|
| refrigeration and water treatment equipment | 1972 | 5 - 8 | \$13,872.23 |

Petitioner claimed an investment tax credit thereon in the amount of \$138.72.

(b) During the fiscal year ended September 30, 1973, petitioner placed the following equipment into service:

| <u>DESCRIPTION</u> | <u>DATE ACQUIRED</u> | <u>LIFE</u> | <u>COST</u> |
|---|----------------------|-------------|-------------|
| new cooling tower for storage of eggs in production | 3/1/73 | 8 | \$ 1,473.00 |
| cooling units | 8/31/73 | 8 | 12,643.00 |

Petitioner claimed a credit thereon in the amount of \$141.00.

(c) During the fiscal year ended September 30, 1974, petitioner claimed an investment tax credit of \$122.08 with regard to the following equipment:

| <u>DESCRIPTION</u> | <u>DATE ACQUIRED</u> | <u>LIFE</u> | <u>COST</u> |
|--------------------------|----------------------|-------------|-------------|
| scale | 10/8/73 | 5 | \$ 100.00 |
| industrial charger | 2/20/74 | 5 | 356.94 |
| pallet truck and battery | 2/20/74 | 5 | 2,381.95 |
| pallet trucks | 7/31/74 | 5 | 3,314.89 |

3. Petitioner is a New York corporation engaged in the wholesale egg business. It purchases eggs directly from producer farms in farm-run condition

and prepares them for distribution to supermarkets in accordance with applicable state and Federal statutes. The eggs are delivered to petitioner in refrigerated trucks and moved directly to coolers to maintain their freshness.

From the coolers, the eggs are transported by conveyor to a station where they are placed by hand onto an automatic loader. The eggs are next automatically conveyed, via another conveyor, through a mechanized washing system, consisting of hot water jets and nylon brushes, for the purpose of removing feathers and other debris adhering thereto. A chlorine rinse follows. The eggs thence proceed through an oil spray which replaces their natural protective coating. A warm air blower then dries them. The next stage of the sequence occurs at the candling station: employees select out any cracked, spotted or otherwise undesirable eggs. The quality eggs continue by conveyor to scales where they are individually weighed to comply with Federal and state size regulations (extra large, large, medium, etc.). They are thereafter transported, by weight, to the packing station and mechanically dropped into dozen cartons. Finally, petitioner's employees pack the cartons into cases, which are taken by pallet to coolers to await distribution.

The end products of the described sequence are grade A eggs which are distributed to supermarkets; grade B eggs which are sold to dealers for subsequent sale as such; and grade Cs (cracked and stained eggs) which by law must be shipped to a federally-licensed egg-breaking plant.

4. Petitioner contended that the equipment, elaborated at Finding of Fact "2", qualified for investment tax credit by reason of its use in "processing"; that is, the ungraded egg, which is not marketable per Department of Agriculture standards, is processed by means of said equipment into a graded, candled, washed egg which is then marketable.

CONCLUSIONS OF LAW

A. That section 210.12(b) of the Tax Law makes available to the corporate taxpayer an investment tax credit with respect to tangible personal property which is depreciable pursuant to section 167 of the Internal Revenue Code, has a useful life of four years or longer, is acquired by purchase as defined in section 179(d) of the Code, has a situs in New York and is "...principally used by the taxpayer in the production of goods by manufacturing, processing, assembling...".

For purposes of the credit, manufacturing is defined as:

"...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 use of machinery, tools, appliances and other similar equipment."

The objectives of the aforementioned section were set forth in a Memorandum filed by the Department of Taxation and Finance and include the following:

"...[to] encourage the modernization of antiquated production facilities and [to] make New York a more attractive location for manufacturers by giving a tax credit for new investments in production facilities." Mc Kinney's 1969 Session Laws of New York 2503.

The term "manufacturing" is generally defined, for purposes of tax statutes, as the production, by hand or machinery, of a new or different article or product from raw or prepared materials. A particular process must bring about a substantial or significant change in the basic material in order to constitute manufacturing; a superficial change in the basic material does not amount to manufacturing. Annot., 17 A.L.R.3d 7 (1968).

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., e.g., Cochrane v. Deener, 94 U.S. 780 (1877); Gressel Produce Co. v. Kosydar, 297 N.E.2d 532 (Ohio, 1973); Linwood Stone Products Co. v. State Dept. of Revenue, 175 N.W.2d 393 (Iowa, 1970); 34 Words and Phrases 261.

B. That the equipment for which petitioner claimed investment tax credit in fiscal years ended September 30, 1972, 1973 and 1974, did not satisfy the requirements of section 210.12(b) of the Tax Law. The operations performed on the farm-run eggs by petitioner's employees and machinery did not constitute manufacturing or processing; the end result was not so significantly different from the raw material that the operations performed could be deemed "manufacturing" or "processing".

As the court stated in Gressel Produce Co., supra, after examining an operation very much like that of petitioner:

"The operation described herein evidences no change in the state or form of the eggs regardless of the fact that they may have been enhanced in value. Those eggs which were unfit for consumption when received from the producer remained unfit for consumption; and those eggs which were fit for consumption when delivered to the retailer were fit for consumption at the time they were received." Id. at 536.

C. That the petition of J. H. Wattles, Inc. is hereby denied, and the notices of deficiency issued October 30, 1975 are sustained in full.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER