

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Holiday Houses of New Jersey, Inc.
John M. Halpin, Treasurer : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Franchise Tax on
Business Corporations under Article 9-A of the Tax :
Law for the 52-53 Week Years Ending 12/28/75 and
1/2/77. :

State of New York
County of Albany

David Parchuck, 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 25th day of March, 1983, he served the within notice of Decision by certified mail upon Holiday Houses of New Jersey, Inc., John M. Halpin, Treasurer the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Holiday Houses of New Jersey, Inc.
John M. Halpin, Treasurer
2630 W. Laskey Road
P.O. Box 1016
Toledo, OH 43697

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
25th day of March, 1983.

David Parchuck

Benjamin A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Holiday Houses of New Jersey, Inc. :
John M. Halpin, Treasurer :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Franchise Tax on :
Business Corporations under Article 9-A of the Tax :
Law for the 52-53 Week Years Ending 12/28/75 and :
1/2/77. :

State of New York
County of Albany

David Parchuck, 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 25th day of March, 1983, he served the within notice of Decision by certified mail upon Richard C. Stein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard C. Stein
Stein, Davidoff, Malito, Katz & Hutcher
1775 Broadway
New York, NY 10019

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
25th day of March, 1983.

David Parchuck

Ernest P. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

March 25, 1983

Holiday Houses of New Jersey, Inc.
John M. Halpin, Treasurer
2630 W. Laskey Road
P.O. Box 1016
Toledo, OH 43697

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard C. Stein
Stein, Davidoff, Malito, Katz & Hatcher
1775 Broadway
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
HOLIDAY HOUSES OF NEW JERSEY, 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 52-53
Week Years Ending December 28, 1975 and :
January 2, 1977. :

Petitioner, Holiday Houses of New Jersey, Inc., 2630 West Laskey Road, Toledo, Ohio 43697, 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 52-53 week years December 30, 1974 through December 28, 1975 and December 29, 1975 through January 2, 1977 (File No. 24962).

A formal hearing was held before David Evans, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on January 9, 1980 at 1:15 P.M. Petitioner appeared by Stein, Davidoff, Malito, Katz & Hutcher, Esqs. (Richard C. Stein, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioner was entitled to the investment tax credit provided by section 210.12 of the Tax Law with respect to certain restaurant equipment it acquired in 1975 and 1976.

FINDINGS OF FACT

1. On November 10, 1978, the Audit Division caused to be issued statements of audit adjustment and notices of deficiency for the periods ending December 31, 1975 and December 31, 1976, which disallowed petitioner's claims for investment

tax credit and asserted against petitioner corporation franchise taxes due and owing as follows:

<u>Period Ended</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
12/31/75	\$3,160.36	\$ 712.85	\$3,873.21
12/31/76	<u>2,300.27</u>	<u>323.33</u>	<u>2,623.60</u>
	\$5,460.63	\$1,036.18	\$6,496.81

The field audit report upon which the aforesaid notices were grounded stated that the acquisitions for which the taxpayer claimed investment tax credit were not principally used in the production of goods.

2. Petitioner, Holiday Houses of New Jersey, Inc., is a wholly-owned subsidiary of Gladioux Food Services, Inc. It was incorporated under the laws of New Jersey on March 14, 1958 and began business in New York State on September 25, 1972. Petitioner operates certain restaurants and vending machine concessions situated in the service areas of the New York State Thruway.

3. During the period December 30, 1974 through December 28, 1975, petitioner placed the following depreciable tangible personal property into service at various restaurant plazas alongside the Thruway:

<u>Description</u>	<u>Cost</u>
(a) vending machines for:	
(i) candy	\$ 79,493.00
(ii) cigarettes	25,412.00
(iii) prepared food	2,762.00
(iv) coffee	1,581.00
(v) cold drinks	100.00
(vi) pastry, snacks	2,999.00
(vii) ice cream	3,800.00
(viii) coin sorter and counters	1,268.00
(b) cash registers	5,399.00
(c) carts, shelving, work tables, racks, scales	4,685.00
(d) stoves, fryers, griddles, toasters, percolators	5,864.00
(e) mixers, cutters, choppers, slicers	8,625.00
(f) warmers (food, bun, butter, popcorn)	1,775.00
(g) coolers, refrigerators, ice machines	1,550.00
(h) serving counters, tables, chairs	8,215.00
(i) cleaning equipment	1,600.00
(j) lockers, time recorders, office equipment	2,590.00
(k) music equipment	300.00
	<u>300.00</u>
TOTAL COST	\$158,018.00

The useful life of the vending machines was five years; on all other equipment it was eight years if purchased new, or five years if purchased used.

4. During the period December 29, 1975 through January 2, 1977, petitioner placed the following depreciable tangible personal property into service at various restaurant plazas along the Thruway:

<u>Description</u>	<u>Cost</u>
(a) vending machines for:	
(i) candy	\$ 6,964.00
(ii) cigarettes	1,119.00
(iii) prepared food	2,756.00
(iv) coffee	6,125.00
(v) popcorn	6,454.00
(vi) pastry, snacks	3,310.00
(vii) sanitary napkins	2,800.00
(b) cash registers, coin sorters, safes	30,759.00
(c) carts, shelving, work tables, racks, scales	21,286.00
(d) stoves, fryers, griddles, toasters, percolators	13,889.00
(e) mixers, cutters, choppers, slicers	16,423.00
(f) utensils, pots, pans	30,340.00
(g) warmers (food, bun, butter, popcorn)	12,410.00
(h) coolers, refrigerators, ice machines	15,673.00
(i) serving counters, cafeteria lines, tables, chairs	20,699.00
(j) cleaning equipment	14,234.00
(k) pest control equipment	1,325.00
(l) lockers, time recorders, office equipment	5,840.00
(m) music equipment	1,200.00
	<u>Subtotal</u>
	\$213,606.00
Less 1976 disposals of 1975 acquisitions	<u>22,470.00</u>
TOTAL COST	\$191,136.00

The useful life of the above equipment was as indicated in Paragraph 3.

5. Petitioner timely filed its New York State Corporation Franchise Tax Report for the 52-53 week year December 30, 1974 through December 28, 1975 and claimed therein an investment credit in the amount of \$3,160.36 based upon the acquisitions enumerated at Paragraph 3.

6. Petitioner timely filed its Corporation Franchise Tax Report for the 52-53 week year December 29, 1975 through January 2, 1977 and claimed therein an investment credit of \$3,494.54 based upon the acquisitions enumerated at Paragraph 4.

7. During the years for which the credit was claimed, petitioner was engaged in the operation of approximately fifty-two restaurants, including coffee shops, cafeterias and snack bars, at the service areas of the Thruway. Other than the type of service rendered to customers at the various establishments (table service, cafeteria lines, etc.), the kitchens functioned and were managed in a similar manner, and the food products were, insofar as possible, standard throughout the chain. The operation of the kitchens may be outlined as follows:

- (a) Two "menu cycles" (weekly menus) were devised by the general manager or director of operations, for distribution to the restaurants.
- (b) The manager and supervisor of the unit established purchasing guidelines in order to implement the menu cycles and planned for handling and storage of the foodstuffs upon delivery.
- (c) Taking into consideration the staff distribution on each of the three shifts, the volume of business, the quantity of a given food item to be prepared, and the steps and equipment entailed in the preparation thereof, management scheduled the cooking and combining of foods. Some items were capable of preparation in one-half hour; others required two to four hours, with all phases of preparation taking place in one day (ex: fried chicken) or over several days (ex: spaghetti with tomato sauce and meatballs).
- (d) Recipes proven over time to meet the satisfaction of customers were posted in the kitchen area, and employees were directed to follow them as closely as possible.

Petitioner asserted that due to the scope and volume of its business, most food items were prepared and assembled long before ordered by customers, and petitioner likened its method of operation to that of an assembly line.

CONCLUSIONS OF LAW

A. That subdivision 12 of section 210 of the Tax Law¹ makes available to the corporate taxpayer an investment tax credit with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are depreciable pursuant to section 167 of the Internal Revenue Code, have a useful life of four years or longer, are acquired by purchase as defined in section 179(d) of the Code, have a situs in New York and are principally used by the taxpayer in the production of goods by (inter alia) manufacturing, processing or assembling. Paragraph (b) of said subdivision defines manufacturing, for purposes of the credit, 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 the use of machinery, tools, appliances and other similar equipment."

The objectives of the credit were set forth in a Memorandum filed by the Department of Taxation and Finance in support of its enactment 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."

McKinney's 1969 Session Laws of New York 2503.

B. That vending machines which stored and dispensed products manufactured and processed by entities other than petitioner (e.g., candy, coffee, cigarettes,

¹ The regulations promulgated by the Commission under section 210.12 (20 NYCRR Subpart 5-2) are applicable only to the second period at issue, December 29, 1975 through January 2, 1977. 20 NYCRR 2-1.4(b).

ice cream) may not be the subject of credit. Matter of Empire Freezers of Syracuse, Inc., State Tax Comm., May 3, 1978.

C. That the preparation of food by a restaurant does not constitute the production of goods by manufacturing or processing. Matter of John F. and Sarah Mahoney, State Tax Comm., April 1, 1976. Accordingly, the remaining items at issue, claimed by petitioner to be connected with the storage and preparation of foods and beverages, did not qualify for the credit.

D. That the petition of Holiday Houses of New Jersey, Inc. is hereby denied, and Notices of Deficiency issued November 10, 1978 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 25 1983

Richard G. W. Allen
PRESIDENT

Francis Q. Koenig
COMMISSIONER

COMMISSIONER

I dissent.

Mark J. Friedman

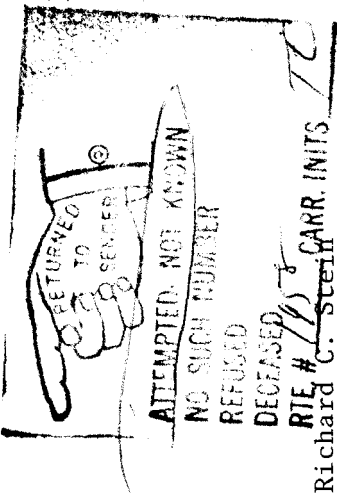
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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CERTIFIED

P 389 758 741

MAIL



Richard C. Stein
Stein, Davidoff, Malito, Katz & Hatcher
1775 Broadway
New York, NY 10019

Repy Copy

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

March 25, 1983

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John M. Halpin, Treasurer
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D. That the petition of Holiday Houses of New Jersey, Inc. is hereby denied, and Notices of Deficiency issued November 10, 1978 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 25 1983

Roderich G. van Ceu
PRESIDENT

Francis R. Koenig
COMMISSIONER

COMMISSIONER

I dissent.

Mark J. Friedlander