

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Staten Sanitation Corp. : 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 Years 1973 & 1974. :

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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Staten Sanitation Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Staten Sanitation Corp.
640 Fifth Ave.
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of February, 1983.

David Parchuck

James A. Haplund

**AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174**

STATE OF NEW YORK

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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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Wolf Fleiss the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Wolf Fleiss
Shanholt, Marinoff, Fleiss & Co.
666 Fifth Avenue
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
11th day of February, 1983.

David Parchuck

Annunzio A. DiStefano

**AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174**

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

February 11, 1983

Staten Sanitation Corp.
640 Fifth Ave.
New York, NY 10019

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
Wolf Fleiss
Shanholt, Marinoff, Fleiss & Co.
666 Fifth Avenue
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

STATEN SANITATION CORP.

DECISION

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Years
1973 and 1974.

Petitioner, Staten Sanitation Corp., 640 Fifth Avenue, New York, New York 10019, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1973 and 1974 (File No. 20795).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 28, 1979 at 9:30 A.M. Petitioner appeared by Wolf Fleiss, CPA. The Audit Division appeared by Peter Crotty, Esq., (Bruce M. Zalaman, Esq., of counsel).

ISSUES

I. Whether petitioner can take a net operating loss deduction on its 1973 and 1974 corporation franchise tax returns, when such deduction exceeded the one taken on petitioner's 1973 and 1974 Federal corporation income tax returns.

II. Whether petitioner's sewage treatment facility qualifies for an investment tax credit.

FINDINGS OF FACT

1. Petitioner timely filed New York State corporation franchise tax report, form CT-3, for the years 1973 and 1974.

2. On September 7, 1976, the Audit Division issued a Statement of Audit Adjustment to petitioner for the years 1973 and 1974. The adjustment for the year 1973 showed petitioner owed \$3,497.05 which included \$2,948.73 in taxes and \$548.32 in interest. The adjustment for the year 1974 showed petitioner owed \$8,715.43 which included \$7,741.54 in taxes and \$973.89 in interest. A timely Notice of Deficiency reflecting these adjustments was sent to petitioner.

3. Petitioner subsequently timely filed a petition for revision of the Notice of Deficiency.

4. In the tax years 1973 and 1974, petitioner paid its stockholders an item of interest. Pursuant to Federal Income Tax Law, petitioner deducted such interest from its gross income. Consequently, petitioner had no income for Federal tax purposes and therefore, was unable to take a net operating loss deduction on its Federal tax return.

5. Under New York State Tax Law, this item of interest is not deductible from petitioner's gross income. Consequently, petitioner did have income for State tax purposes.

6. Petitioner took a net operating loss deductions of \$82,080.00 and \$35,484.00 on line 9, Schedule 13 of its New York State corporation franchise tax returns for the respective years 1973 and 1974.

7. In 1969 petitioner built a sewage disposal system, and in 1974 petitioner received its initial permit from the New York City Department of Health to operate this system.

8. On its 1974 tax return, petitioner reported by Claim for Investment Tax Credit, form CT-46, a claim for an investment tax credit for the sewage disposal system.

9. Petitioner asserts this investment tax credit in the amount of \$5,242.00 arose in 1969 when the system was built and that it correctly carried over \$4,548.00 of that credit to tax year 1974.

10. Petitioner's sewage disposal system takes sewage which has been mixed with water in petitioner's plumbing facilities and other waste which has been assembled in petitioner's disposal facilities and transforms the sewage and waste into sludge which is then dumped.

CONCLUSIONS OF LAW

A. That it has been the long standing, consistent policy of the State Tax Commission to confine the New York net operating loss deduction to that amount taken for Federal purposes for the tax year in question. Tax Law section 208(9)(f); Ruling of the State Tax Commission, March 4, 1962, section 3.12(d); Matter of Savin Business Machines Corp., State Tax Commission, March 24, 1970; Matter of James H. Shiels et. al. v. the State Tax Commission, 52 N.Y. 2d 954.

B. That petitioner took no Federal net operating loss deduction in the tax years 1973 and 1974. Therefore, it may not take a State net operating loss deduction for those years.

C. That Tax Law section 210(12)(e) provides to the corporate taxpayer a carry over of the investment tax credit.

D. That Tax Law section 210(12)(b) provides to the corporate taxpayer an investment tax credit with regard to tangible property, including buildings and structural components of buildings, that is "principally used by the taxpayer in the production of goods by manufacturing...".

For the purposes of the credit, manufacturing is defined as:

"...the process of working raw materials into wares suitable for use or which gives new shape, new quality or new combinations to matter which has already gone through some artificial process by the use of machinery, tools, appliances and other similar equipment."

E. That the objectives of the aforementioned section are "...to encourage the modernization of antiquated production facilities and to make New York a more attractive location for manufacturing by giving a tax credit for new investment in production facilities." Memorandum of Department of Taxation and Finance, McKinney's 1969 Session Laws of New York 2503. Pursuant to these objectives the State Tax Commission strictly construes the term "manufacturing"." Matter of James H. Wattles, Inc., State Tax Commission, November 17, 1981.

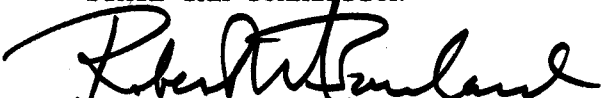
F. That the function of the sewage disposal system for which petitioner claimed the investment tax credit in tax year 1974 does not constitute manufacturing within the meaning of Tax Law section 212(12)(b). The operation performed on the waste brought into the system did not convert the waste into some new shape, quality, or combination, or make it suitable for use as the sludge was not used for any purpose after the conversion process except that of being dumped.

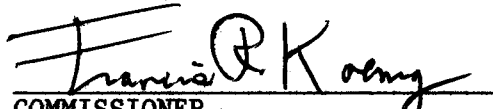
G. That the petition of Staten Sanitation Corp. is hereby denied and the Notice of Deficiency is sustained.

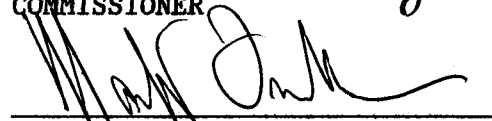
DATED: Albany, New York

FEB 11 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER