STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of L-Brooke Farms, Inc. for Redetermination of a Deficiency or Revision of a Determination or Refund of Corporation Franchise Tax under Article 9A of the Tax Law for the Fiscal Year Ending 2/28/77.	AFFIDAVIT OF MAILING

State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon L-Brooke Farms, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

L-Brooke Farms, Inc.
c/o Donald C. Britt, Pres.
7275 Batavia-Byron Rd.
Byron, NY 14422

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
31st day of December, 1984.

David Parchuck

Nicole J. Williams
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

[illegible]

AFFIDAVIT OF MAILING

for Redetermination of a Tax Assessed or Revised
or a Determination or Refund of Corporation
Franchise Tax under Article [illegible] of the Tax Law for
the Fiscal Year ending [illegible]

State of New York :
: ss.:
County of Albany

[illegible] being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the [illegible] day of December, 19[illegible], he served the within notice of Determination by certified mail upon [illegible] the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

[illegible] Inc
c/o Donald [illegible]
[illegible] Hetzenbergen Rd.
[illegible] 17622

and by depositing same enclosed 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
[illegible] day of December, 19[illegible]

[illegible]

Authorized to administer oaths
pursuant to Tax Law Section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of L-Brooke Farms, Inc. :

for Redetermination of a Deficiency or Revision of a Determination or Refund of Corporation Franchise Tax under Article 9A of the Tax Law for the Fiscal Year Ending 2/28/77. :

AFFIDAVIT OF MAILING

State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon William M. Colby, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William M. Colby
Harter, Secrest & Emery
700 Midtown Tower
Rochester, NY 14604

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
31st day of December, 1984.

David Parchuck

Nicole J. Williams
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

Nicholas Lacey, Inc.

AFFIDAVIT OF MAILING

For Redetermination of a Jeopardy Assessment
of a Determination or Refund or Revocation
Franchise Tax under Article 9A of the Tax Law for
the Fiscal Year Ending 12/31/77.

State of New York :
: ss.:
County of Albany :

David Ferdinand, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 21 years of age, and that on the 21st day of December, 1984, he served the within notice of Decision by certified mail upon William M. Colby, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a sealed, postpaid wrapper addressed as follows:

William M. Colby
Harter, Secrest & Emery
700 Midtown Tower
Rochester, NY 14604

and by depositing same enclosed 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
21st day of December, 1984.

Authorized to administer oaths
pursuant to Tax Law section 174

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

December 31, 1984

L-Brooke Farms, Inc.
c/o Donald C. Britt, Pres.
7275 Batavia-Byron Rd.
Byron, NY 14422

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
William M. Colby
Harter, Secrest & Emery
700 Midtown Tower
Rochester, NY 14604
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of L-BROOKE FARMS, INC. for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Fiscal Year Ending February 28, 1977.	DECISION

Petitioner, L-Brooke Farms, Inc., c/o Donald C. Britt, President, 7275 Batavia-Byron Road, Byron, New York 14422, 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 fiscal year ending February 28, 1977 (File No. 28045).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on September 12, 1983 at 1:15 P.M. with all briefs to be submitted by November 28, 1983. Petitioner appeared by Harter, Secrest & Emery, Esqs. (Kaye A. Thomas, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

In addition, on September 12, 1983, the petitioner by Harter, Secrest & Emery, Esqs. (William M. Colby, Esq., of counsel) and the Audit Division by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel) entered into a stipulation of facts which is incorporated herein and made a part of this decision.

ISSUE

Whether petitioner was entitled to investment tax credits on the purchase of two pickup trucks licensed for over-the-road use which were principally used in the production of goods.

FINDINGS OF FACT

1. On May 3, 1978, the Audit Division issued a Statement of Audit Adjustment against L-Brooke Farms, Inc. alleging a corporation tax deficiency of $172.91 plus interest. The Audit Division disallowed an investment tax credit of $172.91 for the following reason:

> "Pursuant to Section 210.12 of the New York State Tax Law, transportation equipment licensed for over-the-road use does not qualify for the investment tax credit. Therefore, the 1976 Chevrolet Pickup (cost @ $5,045.84) and the 1976 Chevrolet Luv Pickup (cost @ $3,600.00) have been disallowed."

2. On November 2, 1979, the Audit Division issued a Notice of Deficiency against petitioner alleging a corporate tax deficiency of $172.91 plus interest.

3. On November 5, 1979, the Audit Division issued a Corporation Tax Explanation of Refund Adjustment which reduced petitioner's initial refund of $3,999.03 for the fiscal year ending February 28, 1979 to $3,776.69. The difference was applied to the alleged deficiency of $172.91 plus interest described in Finding of Fact "1", supra.

4. Petitioner is a successful farm operation which has substantial income from the production of beets, corn, wheat, hay and straw. The farm is spread out over an area approximately forty-five square miles.

5. Petitioner claimed an investment tax credit in the amount of $172.91[1] on the purchase of a 1976 Chevrolet pickup and a 1976 Chevrolet Luv pickup. The trucks bore agricultural/commercial license plates and not farm plates. Bearing such plates, they could be used on the public roads for purposes other than the transportation of goods during the production process and, on occasion, they were in fact so used.

---

[1] A Form CT-46, Claim for Investment Tax Credit was not introduced into the record. However, it appears that only part of petitioner's claim for an investment tax credit was disallowed. The disallowed part consisted of a claim for credit on the purchase of the two pickup trucks.

6. The pickup trucks were tangible personal property depreciable pursuant to I.R.C. §167, had useful lives of four years or more, were acquired by purchase as defined in I.R.C. §179(d) and were situated in New York State. In addition, the parties stipulated that the trucks were used more than fifty percent of their operating time for transportation of goods during the manufacturing process within the meaning of section 5-2.4(b) of the Corporation Franchise Tax Regulations. However, it is the Audit Division's position that pursuant to 20 NYCRR 5-2.4(b), because the trucks were licensed for use on public roads, they did not qualify for the investment tax credit.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law §210.12(b), a corporation subject to taxation under Article 9-A of the Tax Law is entitled to an investment tax credit with respect to tangible personal property which is depreciable pursuant to I.R.C. §167, has a useful life of four years or longer, is acquired by purchase as defined in I.R.C. §179(d), has a situs in New York and is "principally used by the taxpayer in the production of goods by manufacturing, processing, assembling... agriculture...".

B. That 20 NYCRR 5-2.4(b) defines "property used in the production of goods", in part, as follows:

> "Property used for transportation of goods during the manufacturing process qualifies. However, transportation equipment used on public roads does not qualify."

C. That 20 NYCRR 5-2.4(c) defines the term "principally used" as meaning more than 50%. Because the parties have stipulated that the trucks were used more than 50% of their operating time for transportation of goods during the manufacturing process, it follows that the petitioner meets the standards provided in Tax Law section 210.12(b) as further defined in 20 NYCRR 5-2.4(c).

20 NYCRR 5-2.4(b) is applicable to the situation where materials are processed on the public highway enroute to a site, as in the case of transit mix concrete trucks, and not to the situation in the instant case. Matter of DeWitt Concrete Corp., State Tax Commission, November 16, 1977.

D. That the petition of L-Brooke Farms, Inc. is granted and the Notice of Deficiency herein is cancelled.

DATED: Albany, New York

DEC 31 1984

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER