

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JOHN F. and SARAH MAHONEY : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Personal Income Tax :  
under Article 22 of the Tax Law for :  
the Year 1972. :

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Petitioners, John F. and Sarah Mahoney, have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972. (File No. 2-19108522).

The petitioners waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Is kitchen equipment used in a restaurant business tangible personal property or other tangible property used principally in the production of goods for purposes of the investment credit allowed under section 606 of the Tax Law?

FINDINGS OF FACT

1. The petitioners, John F. and Sarah Mahoney, timely filed a New York State resident income tax return.
2. On July 29, 1974, the Income Tax Bureau issued a Statement

of Audit Changes against the petitioners asserting that additional tax was due on the grounds that certain assets purchased by the petitioners did not qualify for an investment tax credit. A Notice of Deficiency was issued in the total amount of \$37.20.

3. The petitioners, John F. and Sarah Mahoney, are partners in a restaurant business known as the Sunset Lodge located in Norwood, New York. At some time after December 31, 1968, the petitioners purchased kitchen equipment depreciable under section 167 of the Internal Revenue Code having a useful life of more than four years. Such equipment was situated in New York State and was used principally in the preparation of food in the petitioners' restaurant.

#### OPINION

Section 606(a)(1) of the Tax Law permits a credit against personal income tax equal to one percent of the cost or other basis, for Federal income tax purposes, of tangible personal property and other tangible property; including buildings and structural components of buildings acquired, constructed, reconstructed or erected after December 31, 1968, and before January 1, 1974. In order to be eligible for this credit, such tangible personal property or other tangible property must be "principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing" pursuant to section 606(a)(2) of the Tax Law.

The petitioners argue that the kitchen equipment in question was utilized in the production of goods pursuant to section 606(a)(2) of the Tax Law since food was processed by this equipment in the petitioners' restaurant business. The Income Tax Bureau argues that, for the purposes of section 606, the production of goods by processing does not include the preparation of food by a restaurant, a service oriented business.

In the memorandum accompanying the introduction of the bill adding this credit to the Tax Law (N.Y.S. Legislative Annual, 1969, pg. 447) a stated purpose of the proposed legislation was 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. Reference was also made to the fact that New York was an old manufacturing state with many obsolete production facilities. Tax incentives were urged in order to persuade owners of such enterprises to modernize and remain in New York. It appears that the Legislature intended the investment credit of section 606 of the Tax Law to apply to certain industrial, agricultural, and commercial fishing activities. The word "processing" was intended to refer to a type of industrial activity related to manufacturing. The preparation of food by a restaurant is a service and is not included in this meaning of processing.

#### CONCLUSIONS OF LAW

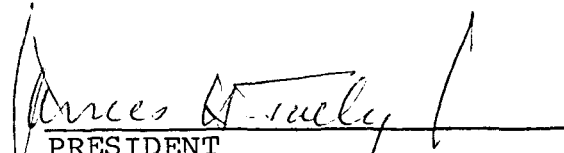
A. That, the preparation of food by a restaurant does not constitute production of goods for the purposes of section 606(a)(2)

of the Tax Law. Therefore, kitchen equipment purchased for use in the preparation of food by a restaurant does not qualify as tangible personal property or other tangible property eligible for the investment credit allowed by section 606(a)(1) of the Tax Law.

B. That, the petition is denied.

DATED: Albany, New York  
April 1, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER