

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Stephen J. & Arline M. Beeferman :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1978. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 21st day of October, 1983, she served the within notice of Decision by certified mail upon Stephen J. & Arline M. Beeferman, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen J. & Arline M. Beeferman
12 Northfield Gate
Pittsford, NY 14534

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
21st day of October, 1983.

Connie R. Hagelund

Patricia Kupcheni

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

October 21, 1983

Stephen J. & Arline M. Beeferman
12 Northfield Gate
Pittsford, NY 14534

Dear Mr. & Mrs. Beeferman:

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) 690 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 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STEPHEN J. BEEFERMAN and ARLINE M. BEEFERMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1978.	:	

Petitioners, Stephen J. Beeferman and Arline M. Beeferman, 12 Northfield Gate, Pittsford, New York 14534, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1978 (File No. 37482).

A small claims hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York on June 20, 1983 at 2:00 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (James F. Morris, Esq., of counsel).

ISSUE

- I. Whether the Audit Division properly denied petitioners' claim for investment tax credit upon certain transmitting equipment and receiving devices.
- II. Whether interest accrued against petitioners may be abated.

FINDINGS OF FACT

1. Petitioners, Stephen J. Beeferman and Arline M. Beeferman, husband and wife, timely filed a joint New York State Income Tax Resident Return (Form IT-201/208) for 1978, as well as a subsequent timely New York State Income Tax Amended Resident Return (Form IT-201-X) for the same year. On these returns, petitioners claimed an Investment Tax Credit in the amount of \$330.51, which is

equal to three percent (3%) of petitioners' claimed qualified investments of \$11,017.00.

2. On April 7, 1982, the Audit Division issued a Notice of Deficiency to petitioners asserting additional tax due for 1978 in the amount of \$214.59, plus interest. Mrs. Beeferman's name appears in this proceeding only by virtue of having filed the above tax returns jointly with Mr. Beeferman. Accordingly, all references made hereafter to petitioner shall pertain solely to petitioner Stephen J. Beeferman.

3. A Statement of Audit Changes issued previously by the Audit Division on January 15, 1982 explained the basis for the above Notice of Deficiency as follows:

"[s]ection 606 of the New York State Income Tax Law provides an investment credit on qualifying property used in the production or manufacturing of goods. Since your communication business is that of a service, the investment credit claimed is disallowed."

4. During the year at issue, petitioner was a principal owner of Genesee & Allegheny Radiotelephone Co., Inc. ("G & A")¹. G & A was engaged in the business of signalling or notifying its individual customers when some other (third) party sought to contact that customer. This activity, commonly known as "paging", was operated as follows:

- (a) each of G & A's customers was assigned a particular code number;
- (b) when a (third) party called G & A seeking to contact one of G & A's customers, a G & A employee would ascertain that particular customer's code number and enter it into G & A's transmitting equipment;

¹ The claim for investment tax credit appeared on petitioners' personal income tax return assertedly because G & A elected treatment as a small business corporation (subchapter S of the Internal Revenue Code). The propriety of claiming such credit on petitioner's own return (during the year at issue) was not challenged by the Audit Division and is not addressed herein.

- (c) The transmitting equipment then would emit, upon an assigned frequency, a particular radio signal which would activate a radio receiving device, commonly known as a "beeper", worn or carried by the individual customer. Each customer's receiving device was assigned a specific signal, and responded only to that signal;
- (d) the beeper would emit a signal or "beep", indicating to the customer that someone was seeking to contact the customer;
- (e) the customer would then either call his office, answering service or other message collection point to determine why he was paged or, if he was equipped with a voice-receiving type of receiver, hear the caller's message directly through the link established by G & A's equipment.

5. G & A's transmitting equipment was also capable of sending signals to operate emergency switches, pumps, etc., and a small part of G & A's business involved providing this type of service, although the predominant part of its business involved the paging and voice-message services for its customers.

6. G & A neither collected messages nor provided an answering service for its customers. G & A's transmission equipment emitted a one-way signal only, and although with the voice-message service G & A established a direct link whereby the customer with the proper receiving device could hear the caller state his message, none of the receiving devices offered by G & A enabled the customer to respond directly either to G & A or to the (third party) caller.

7. G & A's transmitting equipment was operated on and used electricity to send its radio signals, but the equipment did not generate its own electricity.

8. Petitioner asserts that the transmitting equipment and the receiving devices were interdependent parts of G & A's paging system, that the system could not work without these items and that such transmitting equipment and receiving devices properly qualified for the investment tax credit. Petitioner asserts that the transmitting equipment at issue produced radio signals which

activated or operated other devices, and thus, like generating equipment used by public utilities to produce electricity to power or operate a customer's lights and other appliances, should have qualified for the investment tax credit. Finally, petitioner asserts that G & A's activity of contacting its customers upon the requests of third parties by means of a specifically encoded radio signal for each customer constituted processing of the requests rather than simply the conveying of information².

9. In addition to contesting the basis of the asserted deficiency, petitioner seeks abatement of the interest accrued thereon.

CONCLUSION OF LAW

A. That section 606(a)(2) of the Tax Law in pertinent part provides:

"[a] credit shall be allowed under this subsection with respect to tangible personal property and other tangible property,... 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. For purposes of this paragraph, manufacturing shall mean 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."

B. That G & A was not engaged in the production of goods by, inter alia, manufacturing, processing, etc., but rather was engaged in providing the service of signalling or alerting its individual customers in instances where another person wished to make contact with that customer. G & A utilized radio waves generated by its equipment to effectuate its service. However, G & A was not in business for the purpose of generating or producing radio signals for

² Petitioner notes that it is the radio signal causing the beep emitted by each of G & A's receiving devices, including the voice-message devices, which constituted the processed information, but does not assert that G & A processed the caller's voice message to the customer.

sale, but rather was in business for the purpose of providing a paging service. Thus a comparison of G & A's generation of the radio signals used by it in providing its service, to a public utility's business of generating electricity for sale is inapposite. G & A's method of providing its service did not encompass the production of goods by manufacturing, processing, etc., within the meaning and intent of section 606(a)(2) of the Tax Law. Accordingly, petitioner was not entitled to an investment tax credit based upon the transmitting equipment and receiving devices used by G & A in its business.

C. That Article 22 of the Tax Law does not provide for the suspension, waiver or abatement of interest properly imposed.

D. That the petition of Stephen J. Beeferman and Arline M. Beeferman is hereby denied and the Notice of Deficiency dated April 7, 1982, together with such minimum statutory interest as may be lawfully due and owing, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 21 1983

Rodrick W. Chen
PRESIDENT

Frank R. Koenig
COMMISSIONER

Mark J. Friedman
COMMISSIONER