

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Paul & Lori Joynt :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article(s) 22 of the Tax Law for the :
Year 1980. :
_____ :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of November, 1986, he/she served the within notice of Decision by certified mail upon Paul & Lori Joynt the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul & Lori Joynt
7604 Totman Road
N. Syracuse, NY 13212

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
20th day of November, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Paul & Lori Joynt

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for Redetermination of a Deficiency or Revision :
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Tax under Article(s) 22 of the Tax Law for the :
Year 1980.

:

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of November, 1986, he served the within notice of Decision by certified mail upon Daniel J. Arno, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel J. Arno
107 South Main Street
North Syracuse, NY 13212

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
20th day of November, 1986.

Janet M. Snay

Daniel Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

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

November 20, 1986

Paul & Lori Joynt
7604 Totman Road
N. Syracuse, NY 13212

Dear Mr. & Mrs. Joynt:

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, 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Daniel J. Arno
107 South Main Street
North Syracuse, NY 13212

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PAUL AND LORI JOYNT	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1980.	:	

Petitioners, Paul and Lori Joynt, 7604 Totman Road, North Syracuse, New York 13212, 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 1980 (File No. 52821).

A hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 10, 1986 at 1:15 P.M., with all briefs to be submitted by July 24, 1986. Petitioners appeared by Daniel J. Arno, Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioners' claim for investment tax credit upon their purchase of a backhoe.

FINDINGS OF FACT

1. Petitioners, Paul and Lori Joynt, timely filed a joint New York State personal income tax return for the year 1980. On their return, petitioners claimed an investment tax credit in the amount of \$935.00 which was premised upon their purchase of a backhoe.

2. On April 5, 1984, the Audit Division issued a Notice of Deficiency to petitioners asserting additional tax due for the year 1980 in the total amount

of \$1,267.85, together with interest and penalty asserted due thereon. Of the additional tax asserted due, \$332.85 plus penalty and interest represented additional unincorporated business tax asserted due by the Audit Division. Petitioners conceded their liability with respect to this portion of the deficiency. Remaining at issue is \$935.00 in additional personal income tax plus interest asserted due by the Audit Division. This deficiency was premised upon the disallowance in full of the investment tax credit claimed by petitioners based upon their purchase of a backhoe. As explained in the Statement of Audit Changes dated December 1, 1983 and issued to petitioners, the Audit Division's denial of credit was premised upon its contention that the backhoe was not "principally used in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing."

3. Petitioners purchased the backhoe, a Model 750 Ford Tractor Loader Backhoe, in November 1980 at a cost of \$29,500.00.

4. In 1980, petitioners owned and operated a construction firm, Lan-Co Development, which was involved in on-site construction, excavation, stripping, grading, hauling, trucking, demolition, landscaping and related construction work.

5. Petitioners purchased the backhoe for use in their construction work. It was used for numerous purposes, but was principally used to dig foundations for commercial structures. It was also often used to dig lines for the laying of sewer and water pipes. Petitioners also used the backhoe to dig culverts.

6. On occasion, the backhoe was used in the excavation of limestone which was then crushed and used for back-filling or as surface for parking areas.

7. On many jobs, the topsoil which had been removed in the course of petitioners' excavation work with the backhoe was put through a screener to sift large rocks and other impurities and then replaced. Petitioners then used the backhoe to rough-grade the area and used other equipment to finish grading the area.

8. Petitioners asserted that the uses of the backhoe as described herein met the requirements of the Tax Law with respect to the claimed investment tax credit. Specifically, petitioners contended that the backhoe was used in the production of crushed limestone and refined topsoil by extracting or mining. In those instances where the backhoe dug lines for the laying of water and sewer pipes, petitioners contended that the backhoe was part of the refining or extracting process.

CONCLUSIONS OF LAW

A. That during the period at issue, section 606(a)(2) of the Tax Law provided, in pertinent part:

"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." (Emphasis supplied.)

B. That the term "principally used" means "more than 50 percent" (20 NYCRR 103.1[d][3]). Petitioners' backhoe would thus be principally used in production if it were used in production more than 50 percent of its operating time (id.)

C. That the principal use of the backhoe was to dig foundations for commercial structures (Finding of Fact "5"). Such use was not a use in the production of goods, but rather was a use involving the provision of an excava-


tion service which did not produce goods or result in the production of goods within the meaning and intent of Section 606(a)(2) of the Tax Law.


D. That the petition of Paul and Lori Joynt is in all respects denied and the Notice of Deficiency dated April 5, 1984 is in all respects sustained.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 20 1986


PRESIDENT


COMMISSIONER


COMMISSIONER