

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Nicholas V. & Catherine Findler : 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 1981. :  
\_\_\_\_\_

State of New York :

ss.:

County of Albany :

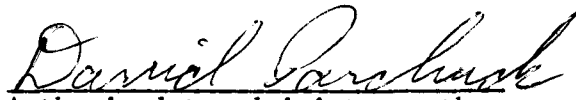
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 9th day of January, 1987, he/she served the within notice of Decision by certified mail upon Nicholas V. & Catherine Findler the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

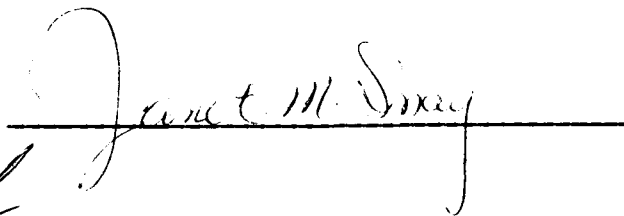
Nicholas V. & Catherine Findler  
7402 East Ironwood Court  
Scottsdale, AZ 85258

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  
9th day of January, 1987.

  
\_\_\_\_\_  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
\_\_\_\_\_

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

January 9, 1987

Nicholas V. & Catherine Findler  
7402 East Ironwood Court  
Scottsdale, AZ 85258

Dear Mr. & Mrs. Findler:

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

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
NICHOLAS V. FINDLER AND CATHERINE FINDLER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1981.	:	

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Petitioners, Nicholas V. Findler and Catherine Findler, 7402 East Ironwood Court, Scottsdale, Arizona 85258, 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 1981 (File No. 60265).

On September 12, 1986, petitioners waived a hearing and submitted their case for decision by the State Tax Commission based on the entire file. After due consideration of the file, the Commission renders the following decision.

ISSUE

Whether petitioners' claimed investment credit for 1981 was properly disallowed by the Audit Division.

FINDINGS OF FACT

1. Petitioners, Nicholas V. Findler and Catherine Findler, husband and wife, timely filed a New York State Income Tax Resident Return (Form IT-201) for 1981, under filing status "3" (Married filing separately on one return).

Included with petitioners' filing for 1981 was Form IT-212, by which petitioner Nicholas V. Findler claimed an investment credit in the sum of \$232.74.<sup>1</sup>

2. The manner of calculating the above-noted investment credit was not specified on said Form IT-212, nor was information concerning the asserted by qualified property upon which the credit was claimed provided on such form.

3. On June 18, 1984, in response to an Audit Division inquiry, petitioner provided the following information relative to the aforementioned claimed investment credit:

"(1) In addition to my position of Professor of Computer Science at the State University of New York in Buffalo, I also engaged in consulting and computer software production. As recognized by the United States legal system, the latter represents the '...manufacturing, processing, assembling, refining of goods...', namely that of tangible information, as done in general by the computer industry.

(2) The location of the investment credit property was in my home office, as approved by the Federal Internal Revenue Service on several occasions. The additional income generated in the home office has always exceeded the costs incurred in the home office.

(3) The following table answers the rest of the questions:

<u>Description of Property</u>	<u>Principal Use</u>	<u>Date Acquired</u>	<u>Life (Years)</u>	<u>Costs</u>	<u>Rate</u>	<u>Investment Credit</u>
Three piece thermopane window	Replacing glass louvre in home office	May 1981	15	1,483.00	4%	\$ 59.32
Electric typewriter	Reports	June 1981	5	313.00	5%	15.65
Computer terminal (+ shipping)	Inform. Processing	July 1981	5	540.00	5%	27.00
Alarm system	Protect hardware	" "	5	1,248.00	5%	62.40

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<sup>1</sup> The petition in this matter was filed jointly by Mr. and Mrs. Findler. However, since the Findlers filed separate returns (on one form) and since the Notice of Deficiency herein was issued to Nicholas V. Findler, it is appropriate that all references to petitioner(s) shall be solely to Nicholas V. Findler.

Bookshelves, chairs	Home office	"	"	5	911.00	5%	45.55
Voltage stabilizer/ battery system	"	"	"	"	255.00	5%	12.75
Drapes	"	"	"	"	202.00	5%	10.10
Extension cords	"	"	"	"	14.00	5%	0.70
Thermocouple	"	"	"	"	8.00	5%	0.40
Total							\$233.87

The above amount is slightly more than the one reported, \$232.74, because the last two items were originally not included."

4. On August 7, 1984, the Audit Division issued to petitioner Nicholas V. Findler a Statement of Audit Changes reflecting a proposed personal income tax deficiency for 1981 in the amount of \$421.78, plus interest. This proposed deficiency was based upon disallowance of petitioner's claims for an investment credit of \$232.74 and a resident credit of \$55.69, and upon limiting a capital loss claimed by petitioner to \$1,500.00.

5. On April 5, 1985, the Audit Division issued to petitioner Nicholas V. Findler a Notice of Deficiency asserting personal income tax due for 1981 in the amount of \$366.09, plus interest. This deficiency reflects an amount due which is less than that shown on the aforementioned Statement of Audit Changes because, based on correspondence, the Audit Division conceded and allowed petitioners' claimed resident credit thus eliminating \$55.69 from the originally proposed deficiency.

6. As the result of a pre-hearing (pre-submission) conference, the Audit Division conceded that the \$1,500.00 limitation did not apply to petitioner's claimed capital loss and that the entire loss, as originally reported, was

allowable. Accordingly, the only issue remaining for resolution is petitioner's claim for investment credit (See Finding of Fact "3").

7. As noted in Finding of Fact "3", it is petitioner's position that the items in question should be qualified items for purposes of the investment credit in that such items are principally used in the processing of tangible information in the manner performed, in general, in the computer industry.

#### CONCLUSIONS OF LAW

A. That Tax Law § 606(a)(2) provides for a credit against personal income tax, based on the cost or other basis of:

"tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are 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 added).


B. That petitioner is not engaged in the production of goods by manufacturing, processing, etc., within the meaning and intent of such terms as used in Tax Law § 606(a). Thus petitioner is not entitled to an investment credit as claimed on the items specified in Finding of Fact "3". (Matter of Quantum Computer Services, Inc., State Tax Commn., September 9, 1983).

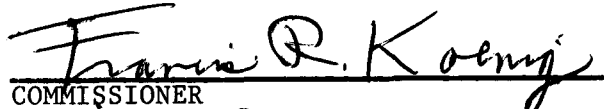
C. That the petition of Nicholas V. Findler and Catherine Findler is granted to the extent that the Notice of Deficiency dated April 5, 1985 is to be modified insofar as to eliminate that portion of the asserted deficiency arising from the capital loss limitation as conceded by the Audit Division at conference (see Finding of Fact "5"); the petition is in all other respects denied and the Notice of Deficiency, as modified, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 09 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER