

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Bryant Fraser :

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 12th day of August, 1987, he/she served the within notice of decision by certified mail upon Bryant Fraser the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bryant Fraser
1297 Third Avenue
New York, NY 10021

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
12th day of August, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

August 12, 1987

Bryant Fraser
1297 Third Avenue
New York, NY 10021

Dear Mr. Fraser:

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) 453-4301

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	:	
BRYANT FRASER	:	DECISION
tor Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1981.	:	

Petitioner, Bryant Fraser, 1297 Third Avenue, New York, New York 10021, 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. 60167).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 30, 1987 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether the investment tax credit claimed by petitioner on the purchase of a computer was properly disallowed by the Audit Division.

FINDINGS OF FACT

1. Petitioner, Bryant Fraser, filed a New York State Resident Income Tax Return for the year 1981 wherein he claimed an investment tax credit of \$182.00 arising from the purchase of an Apple computer.

2. On April 5, 1985, the Audit Division issued a Notice of Deficiency to petitioner asserting a deficiency of personal income tax for the year 1981 in the amount of \$181.69, plus interest of \$65.21, for a balance due of \$246.90. The Statement of Audit Changes, which had previously been issued, explained that the Notice of Deficiency was based upon the Audit Division's position that

the computer was not used in the production of goods and therefore was not eligible for the investment tax credit.

3. During the year in issue, petitioner received assignments from Digital Masters, Inc. ("Digital") to create computer software programs. Petitioner used his computer to make a master copy of the software he designed.

4. In 1983, petitioner entered into a contract to provide Digital with a program he designed. The contract provided that Digital would have an exclusive license to publish and market copies of the program. Petitioner agreed to provide copies of the program on disks using his computer until such time that Digital obtained an equivalent computer at which time Digital would produce the copies. In exchange for providing the designated program, petitioner received royalty income.

5. Digital created the copies of the program.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law § 606(a)(2), an individual 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...."

B. That Tax Law § 606(a)(2) also provides:

"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."

C. That processing is an operation whereby raw material is subjected to some special treatment, by artificial or natural means, which transforms or

alters its form, state or condition (Matter of Continental Terminals, Inc., State Tax Commn., March 5, 1982).

D. That as Governor Rockefeller stated in a memorandum accompanying his approval of the bill containing the investment tax credit at issue herein:


"(1) It will encourage the modernization of antiquated production facilities, and make New York a more attractive location for manufac-turers..." (emphasis added) (1969 McKinney's Session Laws of New York at p. 2576).

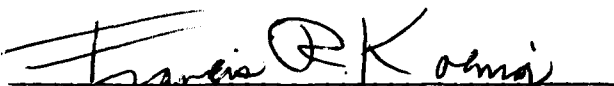
E. That although an investment tax credit may be allowed on the purchase of a computer (e.g. Matter of Multimode, Inc., State Tax Commn., May 20, 1983, wherein an investment tax credit was allowed on the purchase of a computer which was used to print mailing labels), petitioner has not sustained his burden of proof of establishing that computer in issue was principally used in the production of goods by manufacturing, processing, etc., within the meaning of those terms as found in Tax Law § 606(a)(2). Therefore, petitioner may not be allowed an investment tax credit (cf. Matter of Quantum Computer Service, Inc., State Tax Commn., September 9, 1983, wherein an investment tax credit arising from the purchase of a keypunch machine was disallowed under Tax Law § 210[12][b]; See also Reader's Digest Association, Inc. v. State Tax Commission, 103 AD2d 926).


F. That the petition of Bryant Fraser is denied and the Notice of Deficiency, dated April 5, 1985, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER