

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN F. AND SARAH MAHONEY

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income Tax
Taxes under Article ~~(ss)~~ 22 of the
Tax Law for the Year ~~(ss)~~ 1972

State of New York
County of Albany

MARY LOU SAMUELS, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of April, 1976, she served the within
Notice of Decision (~~on Redetermination~~) by (certified) mail upon John F. and Sarah

Mahoney ~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. John F. Mahoney
Norwood
New York 13668

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~of~~ 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

1st day of April, 1976.

Janet Mack

Marylou Samuels



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

DATED: Albany, New York
April 1, 1976

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

Mr. and Mrs. John F. Mahoney
Norwood, New York 13668

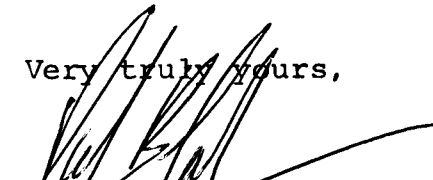
Dear Mr. and Mrs. Mahoney:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~(s)~~ 690 of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,



Paul B. Coburn
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

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

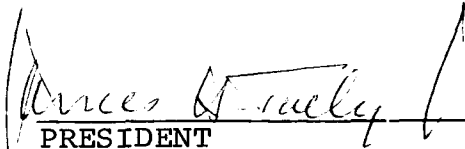
A. That, the preparation of food by a restaurant does not constitute production of goods for the purposes of section 606(a)(2)

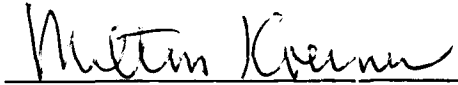
of the Tax Law. Therefore, kitchen equipment purchased for use in the preparation of food by a restaurant does not qualify as tangible personal property or other tangible property eligible for the investment credit allowed by section 606(a)(1) of the Tax Law.

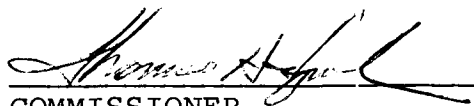
B. That, the petition is denied.

DATED: Albany, New York
April 1, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER