

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

March 9, 1984

Plattekill Mt. Ski Center, Inc.
Roxbury, NY 12474

Gentlemen:

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) 1138 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph C. Capra
Capra Business Consultants, Inc.
Box C
W. Oneonta, NY 13861
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Plattekill Mt. Ski Center, Inc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/74-8/31/78. :
_____:

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Plattekill Mt. Ski Center, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Plattekill Mt. Ski Center, Inc.
Roxbury, NY 12474

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 March, 1984.

David Parchuck

James A. Kayland

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Plattekill Mt. Ski Center, Inc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/74-8/31/78. :
:

AFFIDAVIT OF MAILING

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon Joseph C. Capra, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph C. Capra
Capra Business Consultants, Inc.
Box C
W. Oneonta, NY 13861

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
9th day of March, 1984.

David Parchuck

James A. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PLATTEKILL MOUNTAIN SKI CENTER, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corpora-	:	
tions under Article 9-A of the Tax Law for	:	
the Fiscal Years Ending May 31, 1976, May 31,	:	
1977 and May 31, 1978.	:	

Petitioner, Plattekill Mountain Ski Center, Inc., Roxbury, New York 12474, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal years ending May 31, 1976, May 31, 1977 and May 31, 1978 (File No. 31084).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, State Office Campus, Albany, New York, on August 13, 1982 at 9:30 A.M. Petitioner appeared by Capra Business Consultants, Inc. (Joseph C. Capra). The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed investment tax credits claimed by petitioner upon its acquisition of snowmaking equipment.

FINDINGS OF FACT

1. On October 5, 1979, the Audit Division issued to petitioner, Plattekill Mountain Ski Center, Inc., a Notice of Deficiency, asserting additional franchise tax due under Article 9-A of the Tax Law for the fiscal year ending May 31,

1976 in the amount of \$328.00, plus interest thereon. The basis of the asserted deficiency was the Audit Division's disallowance of investment tax credits claimed by petitioner on snowmaking equipment and a ski lift, which it acquired in December, 1975.

The Audit Division similarly disallowed investment tax credits claimed by petitioner on its acquisition of snowmaking equipment during the fiscal years ending May 31, 1977 and May 31, 1978, and issued two notices of deficiency to petitioner on the dates and in the amounts as shown below.

<u>FISCAL YEAR</u> <u>ENDING</u>	<u>DATE OF</u> <u>NOTICE</u>	<u>TAX</u>
5/31/77	10/05/79	\$1,543.00
5/31/78	08/29/80	\$3,986.00

At the formal hearing in this matter, petitioner, by its representative, conceded its franchise tax liability with respect to disallowance of the credit claimed for the ski lift.

2. Petitioner owns and operates a ski slope, and sells season and day passes which entitle the holder to use the slope, including all lifts.

3. During the skiing season, petitioner operates its snow machines virtually every day on a 24-hour schedule, first to build the base and thereafter to repair the surface. Petitioner collects water in ponds at the foot of the mountain and pumps it up the slopes via pipelines along the trails. The snowmaking machine forces water droplets out into the air, where they freeze and fall as snow. Snowmaking is one of the largest operating costs petitioner incurs because of the energy required to run the machines and to pump the water up the slopes. But, as Mr. Gary Hinkley, petitioner's president, testified at the hearing, "Without [snowmaking] we would have been out of business years ago...".

4. Petitioner maintains that by use of snowmaking equipment, it has been able to increase its sales and the size of its workforce, as follows:

<u>FISCAL YEAR</u> <u>ENDING</u>	<u>GROSS SALES</u>	<u>NUMBER OF</u> <u>EMPLOYEES</u>
5/31/74	\$ 15,951.00	20
5/31/75	41,838.00	31
5/31/76	71,645.00	34
5/31/77	146,968.00	44
5/31/78	241,115.00	60
5/31/79	221,531.00	57
5/31/80	114,438.00	71
5/31/81	224,575.00	52
5/31/82	374,370.00	62

CONCLUSIONS OF LAW

A. That section 210.12 of the Tax Law makes available to the corporate taxpayer an investment tax credit with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are depreciable pursuant to section 167 of the Internal Revenue Code, have a useful life of 4 years or longer, are acquired by purchase as defined in section 179(d) of the Code, have a situs in New York and are principally used by the taxpayer in the production of goods by (inter alia) manufacturing, processing, assembling or refining.

Paragraph (b) of said subdivision furnishes a definition of manufacturing for purposes of the credit.

"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 the production of snow by petitioner's snowmaking equipment constitutes manufacturing so as to qualify said equipment for the investment tax credit. (See People v. Knickerbocker Ice Co., 99 N.Y. 181 (1885), wherein it was held that production of ice by artificial means for commercial purposes

constituted manufacturing within the meaning of a tax statute.) It is of no moment that petitioner is not a manufacturing concern: section 210.12 focuses upon use of the equipment, and the equipment at issue is employed by petitioner solely in this manufacturing process.

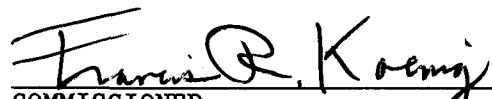
C. That the petition of Plattekill Mountain Ski Center, Inc. is granted; that the Notice of Deficiency for the fiscal year ending May 31, 1976 is to be modified accordingly; and that the notices of deficiency for the fiscal years ending May 31, 1977 and May 31, 1978 are cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 470 315 273

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Joseph C. Capra</i>	
Street and No. <i>304 C</i>	
P.O., State and ZIP Code <i>W. Oneonta, NY 13861</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 470 315 272

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Center, Inc. Platterkill Mt. Ski.</i>	
Street and No.	
P.O., State and ZIP Code <i>W.bury, NY 12474</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982