

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition

of

CONRAD MIGHELLS

DECISION

DTA NO. 802010

for Redetermination of a Deficiency or for Refund of
Personal Income Tax under Article 22 of the Tax Law
for the Years 1981 and 1982.

Petitioner, Conrad Mighells, Vollentine Road, Randolph, New York 14772, filed an exception to the determination of the Administrative Law Judge issued on September 17, 1987 with respect to his petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1981 and 1982 (File No. 802010). Petitioner appeared by Gary M. Kanaley, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Deborah J. Dwyer, Esq., of counsel).

Petitioner filed a brief on exception. The Division filed a letter in opposition to the exception. There was no oral argument.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for investment tax credit on his purchase of certain equipment used in connection with the preparation of sites for the drilling of oil and gas.

FINDINGS OF FACT

We adopt the findings of fact stated by the Administrative Law Judge and such facts are incorporated herein by this reference. These facts may be summarized as follows.

The petitioner, Conrad Mighells, timely filed New York State personal income tax returns for the years 1981 and 1982. During the period at issue petitioner was primarily engaged in the business of contracting with oil and gas drilling companies to provide certain services related to their drilling activities. Specifically, these services consisted on construction of access roads to drilling sites, preparation of the sites for drilling, hauling equipment used for drilling operations, both to and from the drilling sites and installation of culverts or sluice pipes for proper drainage in an area. Petitioner claimed an investment tax credit on a TDSE Dozer, a Drott Loader, a Dozer, a Winch and a tractor utilized in his business. On his 1981 return, petitioner claimed \$1,442.00 in investment tax credit. On his 1982 return, petitioner claimed \$4,244.00. The tractor was not utilized by the petitioner in his drilling site activities.

We supplement the facts found by the Administrative Law Judge by finding that the equipment was used to dig out "mud pits" for use in retaining drilling "mud" during the drilling operations.

The Division of Taxation on April 5, 1985 issued to petitioner a Notice of Deficiency for the years 1981, 1982 and 1983 asserting taxes due for those years of \$9,716.72 plus interest.

Prior to the hearing before the Administrative Law Judge certain issues were resolved. The only issue remaining in dispute is the amounts claimed by petitioner as qualifying for investment tax credits.

OPINION

The sole issue in this case is whether petitioner's equipment was utilized in such a manner that it was involved in the production of goods, i.e., oil and gas, by mining. The burden of proof on this issue is on the taxpayer. (Matter of General Mills Restaurant Group, Inc. v. Chu, 125 AD2d 762, at 763-764.)

The Administrative Law Judge determined that petitioner's equipment did not qualify for the investment tax credit because it was not property used in the production, by mining, of oil and gas but, instead, was used in activities which were preparatory to the production process but not part of that process. We agree.

During the period at issue. Tax Law section 606(a)(2) provided a tax credit against personal income tax imposed under Article 22 of the Tax Law for investments in tangible personal property and other tangible property used by the taxpayer in the production of goods by inter alia mining. The purpose of the credit was to encourage investment in production facilities within the State (Matter of General Mills Restaurant Group, Inc. v. Chu, supra; see also Memorandum of Tax Structure Study Committee, 1969 NY Legis Ann, at 447).

Neither the statute nor the regulations define mining or the activities which qualify for the investment tax credit in connection with production of goods by mining. However, prior administrative and judicial interpretations provide guidance. The State Tax Commission extended the investment tax credit under Tax Law section 210(12)(b)¹ to transportation equipment utilized by a taxpayer in the mining of sand and gravel where the equipment was

¹ The investment tax credit for corporate franchise tax and personal income tax is administered similarly by the Division, see, TSB-M-78(I)(C)

utilized to transport sand and gravel from the mining site to a screening plant, a necessary part of the production process to produce the final product. (Matter of Montauk Sand and Gravel, State Tax Commn., May 29, 1985.) In Matter of John Boadle (State Tax Commn., February 13, 1980) the Commission extended the credit to equipment used by the taxpayer in his custom farming operation for plowing of fields, chopping hay, combining grains and chopping corn.

In an advisory opinion, the Commission extended the credit to various types of equipment, e.g., chainsaws, loaders and skidders used to cut logs and deliver them to a loading area, utilized by a taxpayer in its logging operations (TSB-A-86-[2]-I). The critical factor underlying all of these decisions was that the equipment was utilized in the particular production process, i.e., mining, farming or logging.

Where the necessary utilization of the equipment in the production process is lacking, the credit has been denied. (See, Matter of John F. and Sarah Mahoney, State Tax Commn., April 1, 1976; Matter of General Mills Restaurant Group, Inc. v. Chu, 125 AD2d 762; Matter of Brigar, Inc. v. Chu, 105 AD2d 587; Matter of Readers Digest Association, Inc. and Subsidiaries v. State Tax Commn., 103 AD2d 926.) We find that the utilization of the equipment in this case was for activities preparatory to, but not part of, the production process.

Petitioner seeks to analogize the language of section 606(a)(2) to that of section 1115(a)(12) which grants an exemption from sales tax for machinery used in the production of goods for sale. We find this argument unconvincing. Only through a specific amendment to section 1115(a)(12) were service rigs, vehicles and associated equipment used in mining brought within the exemption from sales tax (see, Envirogas v. Chu, 114 AD2d 38, affd 69 NY2d 632).

Accordingly, we find that petitioner's equipment was not utilized in the production of oil and gas by mining within the meaning of section 606(a)(2) of the Tax Law.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the petitioner, Conrad Mighells, is in all respects denied except to the extent that finding of fact "1(1)" requested by petitioner in his exception is so found;

2. The determination of the Administrative Law Judge is affirmed; and

3. The petition of Conrad Mighells is denied and the Notice of Deficiency issued April 5, 1985 is sustained except to the extent modified by conclusion of law "D" of the Administrative Law Judge's determination.

DATED: Albany, New York
July 14, 1988

/s/ John P. Dugan
President

/s/ Francis R. Koenig
Commissioner