

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
HAND ASSEMBLY AND PACKAGING, INC.	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years 1982	:	
and 1983.	:	

DETERMINATION

In the Matter of the Petition	:
of	:
YOUR MAIL SACK, INC.	:
for Redetermination of a Deficiency or for	:
Refund of Corporation Franchise Tax under	:
Article 9-A of the Tax Law for the Years 1982	:
and 1983.	:

Petitioner Hand Assembly and Packaging, Inc., P.O. Box 529, Corona, Elmhurst Station, Flushing, New York 11373, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1982 and 1983 (File No. 804939).

Petitioner Your Mail Sack, Inc., 43-23 91 Place, Elmhurst, New York 11373, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1982 and 1983 (File No. 804940).

A hearing was held before Nigel G. Wright, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on October 18, 1988 at 3:35 P.M. Petitioners appeared by Richard S. Kestenbaum, Esq. The Division of Taxation appeared by William F. Collins, Esq. and ~~Robert~~ Herbert Kamrass, Esq., of counsel).

Whether a "cheshire" glueing machine and a shrink wrap machine acquired by petitioners during the years in question were "principally used by the taxpayer in the production of goods by

manufacturing, processing, [or] assembly...[etc]". So as to qualify for the investment tax credit under section 210.12(b) of Article 9-A of the Tax Law and section 5-2.4 of the Tax Commissioner's regulations.

FINDINGS OF FACT

1. Hand Assembly and Packaging, Inc. (sometimes known as HAPPI), a subsidiary of Your Mail Sack, Inc., claimed investment credits of \$310.14 for its fiscal year ending September 30, 1981 and \$1,659.00 for its fiscal year ending September 30, 1982. The 1981 credits were based on the acquisition of a "fabricating" unit said to be used in assembling and fabricating. The 1982 credits were based on the acquisition of a "fabricating" unit said to be used in assembling and fabricating, and an "additional credit" of \$155.00.

2. Your Mail Sack, Inc. (the parent of Hand Assembly and Packaging, Inc.) claimed investment credits of \$571.60 for its fiscal year ending February 28, 1982 and \$969.00 for its fiscal year ending February 28, 1983. The 1982 claim is based on the acquisition of a "Cheshire" machine said to be used in fabricating. The 1983 claim is based on the acquisition of a "shrink wrap" machine, a "bursting" machine and "heat sealers" also said to be used in fabricating.

3. A Notice of Deficiency was issued on August 24, 1984 against Hand Assembly and Packaging, Inc. for corporation franchise tax under Article 9-A of the Tax Law for the fiscal year ending September 30, 1981 in the amount of \$310.14, plus interest of \$70.17, for a total of \$380.41. A similar notice was also issued on the same date for the fiscal year ending September 30, 1982 in the amount of \$1,659.00, plus interest of \$375.36, for a total of \$2,034.36.

4. A Notice of Deficiency was issued on October 25, 1985 against Your Mail Sack, Inc. for corporation franchise tax under Article 9-A of the Tax Law for the fiscal year ending February 28, 1982 in the amount of \$571.60, plus interest of \$302.69, for a total of \$874.29. Another Notice of Deficiency was issued on the same date for the fiscal year ending February 28, 1983 in the amount of \$179.00, plus interest of \$65.00, for a total of \$244.00. A further notice was issued on January 10, 1986 for the fiscal year ending February 29, 1983 in the amount of \$969.00, plus interest of \$351.82, for a total of \$1,320.82.

5. A Cheshire machine is used to glue one piece to another piece. This is called "spot gluing" or "tipping". Examples of its use by petitioners were to attach a small box of 12 aspirin tablets to a booklet explaining the uses of aspirin, to attach credit cards to letters and to attach perfume sachets to cards for distribution by department stores. In the use of this machine, petitioners receive the separate items to be attached from a printer, attaches them and then returns them to the printer or to the printer's customer.

6. A shrink wrap machine places plastic wrap around an object and (apparently by the use of heat) shrinks the plastic wrap tight around the object. The object is typically a box which petitioners had folded into shape and filled with a commercial product. This provided security since any breaking or removal of the plastic wrap would be obvious to a customer. It would also keep the object in the wrap orderly and clean. Examples of the use of this machine by petitioners was to wrap a box of Christmas cards, this had no top on it except as provided by the plastic wrap, and to wrap a box (with a separate top) containing a game which consisted of many separate pieces.

CONCLUSIONS OF LAW

A. The machinery here in issue qualifies for the investment credit under section 210.12(b) of the Tax Law.

The "Cheshire" machine is used in gluing pieces together and thus clearly is used in "manufacturing" since that term is defined in that section to include giving new shapes and new combinations to matter.

The shrink wrap machine is also qualified for the credit. The machine is clearly used to "assemble" a commercially acceptable final product. The goods after the plastic wrap is added are significantly different from the separate pieces as they exist prior to assembly by petitioners. This is done usually as a last step in the assembly and prior to the transportation of the goods to

the place of retail sale.

The granting of the credit is not only consistent with the legislative purpose of the credit, but is mandated by such purpose. That purpose is stated in a memorandum of the Senate Rules Committee in support of the bill enacting that credit (Laws of 1969, chapter 1072) as follows: "Encourage the modernization of antiquated production facilities and make New York a more attractive location for manufacturers by giving a tax credit for new investments in production facilities." The credit was expected to "substantially improve New York's competitive position and economic climate" (1969 Legislative Annual, page 447-9).

Petitioners are suppliers of the products they produce and it is in the interests of this State that they produce goods in this State for use here and in other places rather than to have them produce goods in other places (compare, Matter of General Mills Restaurant Group, Inc. v. Chu, 125 AD2d 762, 764). The previous cases cited by the Division of Taxation are inopposite. In particular the Brigar case, which involved a "cheshire" machine. The machine was used by a "letter shop" to glue address labels to envelopes (In the Matter of the Petition of Brigar, Inc., State Tax Commission, April 27, 1983, TSB-H-83[16]C, aff'd 105 AD2d 587).

B. The petitions are granted and the determinations under review are cancelled.

DATED: Albany, New York

ADMINISTRATIVE LAW JUDGE