

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Dobbins & Ramage, Inc.

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation
Franchise Tax under Article(s) 9A of the Tax Law:
for the Fiscal Year Ended 6/30/82.

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 20th day of July, 1987, he/she served the within notice of Decision by certified mail upon Dobbins & Ramage, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dobbins & Ramage, Inc.
99 West Avenue
Lyndonville, NY 14098

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
20th day of July, 1987.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Dobbins & Ramage, Inc.

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article(s) 9A of the Tax :
Law for the Fiscal Year Ended 6/30/82.

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 20th day of July, 1987, he served the within notice of Decision by certified mail upon Thomas J. Swift, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas J. Swift
Swift and Swift, CPA's
111 Main Street - Suite 200
Lockport, NY 14094

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
20th day of July, 1987.

David Parchuck

Janet M. Snay

Authorized to administer oaths
pursuant to Tax Law section 174

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

July 20, 1987

Dobbins & Ramage, Inc.
99 West Avenue
Lyndonville, NY 14098

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) 1090 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

Petitioner's Representative:
Thomas J. Swift
Swift and Swift, CPA's
111 Main Street - Suite 200
Lockport, NY 14094

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
DOBBINS & RAMAGE, INC.
for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Fiscal Year
Ended June 30, 1982.

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DECISION

Petitioner, Dobbins & Ramage, Inc., 99 West Avenue, Lyndonville, New York 14098, 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 fiscal year ended June 30, 1982 (File No. 59566).

A hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on February 5, 1987 at 9:15 A.M. Petitioner appeared by Thomas J. Swift, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's claim for investment tax credit with respect to certain equipment used in the grading, assembling and controlled-atmosphere storage of apples.

FINDINGS OF FACT

1. Petitioner, Dobbins & Ramage, Inc., filed a New York State Corporation Franchise Tax Report for its fiscal year ended June 30, 1982. On its report, petitioner claimed an investment tax credit of \$4,459.04 for certain equipment used, as set forth in the report, in "processing". Also claimed in the report

was \$13,578.06 in unused investment tax credit available to be carried forward to future periods.

2. By Statement of Audit Adjustment, dated September 15, 1985, the Audit Division disallowed \$3,954.87 of petitioner's claimed investment tax credit. This disallowance resulted in a deficiency of \$979.63 for the fiscal year ended June 30, 1982. The Audit Division issued a Notice of Deficiency on February 13, 1985, asserting tax of \$979.63, plus interest of \$334.90, for a total amount due of \$1,314.53. To this amount the Audit Division applied \$1,314.53 in credit from petitioner's report for its fiscal year ended June 30, 1980. The balance due for the fiscal year at issue in the February 13, 1985 notice was, therefore, zero.

3. Petitioner is and was at all times relevant herein a New York corporation engaged in the production of apple juice and the packaging and marketing of whole apples. Petitioner did not grow its own apples, but rather purchased apples or received them on consignment from growers. When received by petitioner, the apples were in "tree-run" condition; that is, before removal of pesticides, dirt, leaves and stems. Upon receipt, petitioner assembled and graded the apples according to size and quality. Petitioner disposed of the poor quality apples. The apples were then placed in atmosphere-controlled, sealed storage rooms which served to retard their spoilage, thereby lengthening the life of the apples. When needed, petitioner removed the apples from the storage rooms and cleaned them. Petitioner then bagged the higher graded apples for sale. The remaining apples were sent, after cleaning, to be processed into apple juice.

4. The equipment for which the Audit Division denied petitioner's claimed credit included grading and assembling equipment, such as pallet boxes and conveyor belts, which served to sort the apples according to size and quality.

Also claimed was equipment used to operate the atmosphere-controlled storage rooms.

5. During the period at issue, petitioner spent 70 percent of its productive time in connection with its sale of whole apples and 30 percent of its time in connection with the production of juice. During the same period, the dollar volume of sales was divided between 60 percent whole apples and 40 percent apple juice.

CONCLUSIONS OF LAW

A. That, during the years at issue, section 210.12(b) of the Tax Law provided for a credit against corporation franchise tax with respect to tangible personal property and other tangible property which was: depreciable pursuant to section 167 of the Internal Revenue Code; had a useful life of four years or more; was acquired by purchase as defined in section 179(d) of the Internal Revenue Code; had a situs in New York State; and was principally used by the taxpayer in the production of goods by processing. With respect to the aforementioned requirements, the sole issue herein is whether the property in question was principally used in the production of goods by processing.

B. That 20 NYCRR 5-2.4(b) defines "principally used" for purposes of Tax Law § 210.12(b) as "more than 50 percent".

C. That the Audit Division properly denied petitioner's claimed investment tax credit herein. In view of Finding of Fact "5", the equipment at issue was principally used in the marketing and sale of fresh apples. Petitioner's activities in grading, assembling, storing and cleaning apples to be sold as fresh did not constitute the production of goods by processing within the meaning of section 210.12(b) of the Tax Law. 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 (see

John Georgallas Banana Distributors of New York, Inc., State Tax Commission, November 9, 1984). The apples sold by petitioner herein were not so significantly different from the "tree-run" apples received by petitioner that the treatment accorded the apples may be deemed "processing" (see Matter of J. H. Wattles, Inc., State Tax Commission, October 30, 1981).

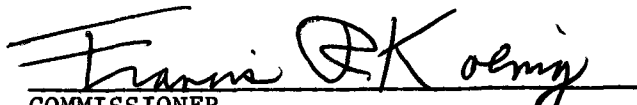
D. That the petition of Dobbins & Ramage, Inc. is in all respects denied and the Notice of Deficiency, dated February 13, 1985, is sustained.

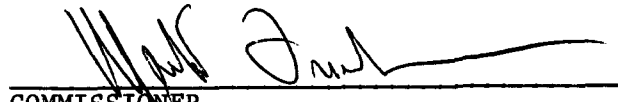
DATED: Albany, New York

STATE TAX COMMISSION

JUL 20 1987


PRESIDENT


COMMISSIONER


COMMISSIONER