

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-H-81-(1)-I
Income Tax
March 6, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I800902C

On August 9, 1980 a Petition for an Advisory Opinion was received from Eli R. Vegh, 749 Westwood Avenue, Staten Island, N.Y. 10314.

The issue raised is whether "Piggyback trailers" leased to others constitute qualified property for purposes of the investment credit available under the Personal Income Tax imposed under Article 22 of the Tax Law.

Petitioner owns a 20% interest in a Florida partnership involved in the ownership and leasing of "Piggyback trailers". The trailers are stated to have a useful life of 7 years. Petitioner also states that the trailers are constantly in transit throughout the country and inquires whether they would nonetheless satisfy the situs requirement of the statute.

Section 606(a) of the Tax Law provides for a credit against the Personal Income Tax, based on the cost or other basis of "...tangible personal property and other tangible property, including buildings and structural components of buildings, which are depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are 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."

In addition, section 606(a)(4) of the Tax Law disallows such credit with respect to otherwise qualified tangible personal property and other tangible property which is leased"...to any other person or corporation."

Accordingly, inasmuch as the trailers at issue are not principally used by the taxpayer in the production of goods and are leased to others they do not qualify for the investment credit available under section 606(a) of the Tax Law. It is therefore not necessary to address the question of situs raised by Petitioner. In addition, Petitioner is advised that the New York City City Personal Income Tax does not provide for an investment credit.

DATED: January 19, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
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