

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

TSB-A-88 (17)C
Corporation Tax
August 24, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C880628A

On June 28, 1988, a Petition for Advisory Opinion was received from Rosco, Inc., 144-31 91st Avenue, Jamaica, New York 11435.

The issue raised is whether a tenant corporation may qualify for an investment tax credit pursuant to section 210.12-B of the Tax Law on improvements made to the building in which it is located if that building is owned by the only stockholders of the corporation.

Petitioner is a small business corporation as defined by the Internal Revenue Code, as amended, under Section 1362(a), and has been incorporated as such since April 1961. Petitioner manufactures automobile accessories and employs a labor force of forty persons generally drawn from the local area. The only stockholders in Petitioner are Sol and Gertrude Englander. The Englanders are also the owners of the building in which Petitioner is located at 144-31 91st Avenue, Jamaica, New York 11435.

Section 210.12-B of the Tax Law provides that a taxpayer under Article 9-A of the Tax Law who has been certified pursuant to Article Eighteen-B of the General Municipal Law is allowed a credit equal to ten percent of its cost or other basis of certain property located within an economic development zone designated as such pursuant to Article Eighteen-B of such law, but only if the acquisition, construction, reconstruction or erection of such property occurred or was commenced on or after the date of such designation and prior to the expiration thereof. To qualify for the credit, the property in question must be acquired by purchase by the taxpayer within the meaning of Internal Revenue Code Section 179(d) and must be used by the taxpayer in the production of goods by manufacturing, processing, assembling, etc.

South Jamaica was designated an economic development zone on July 21, 1987. The Englanders made improvements on said building after July 21, 1987. Thus, the Englander's improvements occurred after the date of such designation and prior to the expiration thereof within the meaning of the statute. See also, Technical Services Bureau Memorandum TSB-M-86(13)C.

The improvements made consisted of an addition to the building which doubled the square footage from 16,000 square feet to 32,000 square feet. This increase in square footage has allowed Petitioner to double its capacity for production, as well as, hire and train a larger work force. Inclusive of the improvements were the installation of a freight elevator and loading dock to accommodate trucks. The main objective of these improvements was to expand the business and create more jobs for the residents of the Economic Development Zone.

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However, section 210.12-B of the Tax Law also provides that "[a] taxpayer shall not be allowed the credit under this Subdivision with respect to any tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation."

Although the Englanders own 100% of the stock of Petitioner, they are not considered one and the same as Petitioner but rather are separate and distinct legal entities. The Englanders hold title to the building and lease it to Petitioner. Thus, although Petitioner may use the building in manufacturing, it has not acquired the property by purchase within the meaning of Internal Revenue Code Section 179(d). On the other hand, the Englanders may have acquired the building by purchase within the meaning of IRC Section 179(d) but are not considered to be using it in manufacturing, because they lease it to Petitioner.

Accordingly, neither the Englanders nor Petitioner qualify for the investment tax credit pursuant to section 210.12-B of the Tax Law with respect to the building located at 144-31 91st Avenue, Jamaica, New York.

DATED: August 24, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.