STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
PAUL J. SUOZZI AND KAREN L. SPENCER	:	DECISION DTA NO. 827275
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 2012.	:	

Petitioners, Paul J. Suozzi and Karen L. Spencer, filed an exception to the determination of the Administrative Law Judge issued on May 24, 2018. Petitioners appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Ellen K. Roach, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a brief in opposition. Petitioners did not file a reply brief. Oral argument was not requested. The six-month period for issuance of this decision began on July 26, 2018, the date that petitioners' reply brief was due.

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

ISSUE

Whether petitioners met their burden of proving entitlement to the solar energy equipment system tax credit pursuant to Tax Law § 606 (g-1) for tax year 2012.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except for findings of fact 2 and 5, which have been corrected to properly reflect the record. In addition, we have

modified findings of fact 12, 15 and 18 to more completely reflect the record. The Administrative Law Judge's findings of fact and the corrected and modified findings of fact are set forth below.

1. Petitioners, Paul J. Suozzi and Karen L. Spencer, jointly filed a New York State personal income tax return for the year 2012 on March 15, 2013. Petitioners claimed a tax credit for qualified solar energy system equipment expenditures in the amount of $5,000.00 on the 2012 return.

2. The Division of Taxation (Division) selected petitioners' 2012 return for review and, by letter dated August 7, 2015, requested that petitioners provide additional information to substantiate the solar energy system equipment expenditures reported on their return.

3. In response, petitioners submitted to the Division a cover letter dated August 17, 2015 with the following attachments:

> 1) a copy of an invoice from Capital Heat, Inc. (Capital Heat), dated December 17, 2012, in the amount of $42,590.00 for a variable speed geothermal heat pump and dedicated 100% domestic hot water heat pump (system), which included the following: 3 ton geothermal heat pump (variable speed compressor with ECM motor), including water furnace, pressurized flow center with variable speed pump, deluxe touch-screen thermostat, 10 kWh electric plenum heater, high efficiency air filter, system sized based on ACCA Manual J Report, and 10 year parts and labor warranty; 1½ ton domestic hot water heat pump, including water furnace, Vaughn 80 gallon storage tank; and 10 year parts and labor warranty; duct work modifications; and ground heat exchanger;
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> 2) copies of canceled checks and credit card statements showing payments from petitioners to Capital Heat, dated November 5, 2012 in the amount of $12,091.50, December 17, 2012 in the amount of $13,462.50, December 21, 2012 in the amount of $15,036.00, January 30, 2013 in the amount of $3,770.27, and July 16, 2013 in the amount of $2,000.00; and
>
> 3) a copy of DSIRE database of state incentives for renewables and efficiency.

4. Based on petitioners' response to the information request, the Division issued a

statement of proposed audit changes, dated September 2, 2015, disallowing petitioners' claim for the solar energy system equipment credit and stating, in part, that:

> "New York State allows a credit for the purchase and installation of a qualified solar energy system. The qualified solar energy system equipment uses solar radiation to produce energy for heating, cooling, hot water, or electricity for residential use.
>
> Systems that generate heat directly are eligible for the credit. Therefore, geothermal systems do not qualify for the credit since these systems use energy stored within the earth's core."

The Division recomputed petitioners' 2012 return and determined additional tax due in the amount of $5,000.00 plus interest.

5. On September 8, 11, and 18, 2015, petitioners sent additional correspondence to the Division contending that their system qualified for the credit. Petitioners enclosed copies of Laws of New York 2005, Chapter 378 and excerpts from the Governor's bill jacket for Chapter 378 of the Laws of New York with the September 11, 2015 correspondence. On September 16, 2015, Ms. Spencer spoke with the auditor's supervisor, Marcia Foley, who informed Ms. Spencer of the Division's position. Ms. Foley stated, in an affidavit dated June 26, 2017, "[i]t is the Division's policy that ground source heat pump systems are not within the range of solar equipment contemplated within Tax Law § 606(g-1)."

6. The legislative sponsor's memorandum in support of the 2005 amendment of the solar credit in issue (L 2005, ch 378), included with petitioners' correspondence, noted the amendment's purpose as: "To broaden the existing solar electric generating equipment personal income tax credit to also include equipment utilizing solar radiation to provide heating, cooling and/or hot water; and to increase the maximum amount of the credit to $5,000.00." Under the memorandum's justification section, the author specifically uses water heating as an example,

and notes that such systems do not use electricity from the power grid. There is no mention of the credit being extended to apply to geothermal systems.

7. On September 21, 2015, petitioners paid $5,978.60 for the tax and interest determined due by the Division for 2012.

8. On December 8, 2015, petitioners responded to the Division's statement of proposed audit changes by returning the disagreement with findings, together with additional correspondence, an owner's manual for their water furnace system, and articles regarding geothermal systems.

9. The Division issued a notice of deficiency (notice) to petitioners, dated November 16, 2015, asserting tax due in the amount of $5,000.00 plus interest in the amount of $1,001.01. The notice reflects petitioners' payment of $5,978.60 and shows a balance due of $22.41. The notice provides the same explanation for the Division's disallowance of the claimed credit as stated in the statement of proposed audit changes (***see*** finding of fact 4). The Division subsequently adjusted the interest, on November 20, 2015, to $978.60.

10. During the hearing in this matter, petitioners presented the testimony of John Blatner, a mechanical engineer employed by Capital Heat, who designed petitioners' system. Mr. Blatner testified that for Capital Heat's first customers in 2011, it did not recommend claiming the solar tax credit for the ground source heat pump systems it installed. Mr. Blatner was informed in 2012 that another ground source heat pump system contractor, Buffalo GeoThermal, was advising customers that the geothermal systems qualified for the state solar tax credit. Capital Heat wanted to provide the same opportunity for its customers, and Mr. Blatner thought that the system would qualify for the credit based on his interpretation of the instructions for form IT-

255, Claim for Solar Energy System Equipment Credit. Mr. Blatner spoke with someone named Ashley from the Division's call center to inquire further whether the system would qualify for the credit. Mr. Blatner testified that Ashley informed him that the system described by him would qualify for the credit. Mr. Blatner made a written note of the conversation in his notebook and informed petitioners of the conversation. Mr. Blatner did not request written confirmation from Ashley regarding the conversation and did not seek an advisory opinion from the Division.

11. Mr. Blatner described a ground source heat pump system as functioning in two ways: 1) the heat pump moves heat from one place to the next; and 2) the ground source refers to the location of heat, which comes from the earth's crust. The system uses energy from infrared solar radiation that is stored in the earth's crust. A heat exchanger, which is a piping system, is installed in the ground, and liquid, consisting of water and antifreeze, is used as a medium to transfer heat. The heat exchanger keeps the liquid separate from the earth, but allows the heat to transfer through the medium of the heat exchanger. The liquid moves through the system into the house and is used to heat the home and hot water. The system utilizes the infrared energy absorbed in the earth to heat indoor air during the cold months and remove heat from indoor air during the warm summer months.

Mr. Blatner distinguished the solar radiation in the earth's crust used in these systems from deep geothermal energy such as molten lava, geysers, or hot springs. Mr. Blatner identified information from the New York State Department of Environmental Conservation's internet web page, which indicates that New York State lacks traditional geothermal energy sources such as volcanoes, geysers and hot springs.

12. Mr. Blatner described the system installed in petitioners' home. A heat exchanger was

installed in the ground outside petitioners' home in order to extract heat from the earth's crust. The heat exchanger was then connected to a heat pump indoors. The indoor heat pump consists of a fluid circulator. When there is a call for heating or hot water in the house, the heat pump turns on and pumps fluid between the indoor heat pump and the outdoor heat exchanger. The fluid circulates through the system and acts as a medium carrying heat from the ground into the house in order to heat the house and water. The ground source heat pump system in petitioners' house is not connected to any other heating system, and is the only system that heats the home and water. Electricity generated by solar panels is used to run the heat pump on petitioners' system. Petitioners' system is not connected to a recreational facility or equipment as a storage medium, and it is not connected to a non-solar energy system. Petitioners submitted photographs taken during the installation of the system. Notations submitted with the photographs indicate that the installation occurred in December 2012.

13. Mr. Blatner stated that the ground source heat pump system is similar to a solar thermal system in that both have heat exchangers, which transfer heat stored from solar radiation to a transfer medium (a water and antifreeze solution), and circulator pumps that transfer the heat through the fluid medium into the home. They differ in that a solar thermal system has an active solar collector, that is active when exposed to the sun's rays, whereas a ground source heat pump system utilizes the energy from solar radiation that is stored in the earth and available 24 hours a day.

14. Petitioners began discussing a ground source heat pump system with representatives from Capital Heat in the fall of 2012, when Capital Heat was servicing petitioners' natural gas furnace. Petitioners met with John and Phil Blatner of Capital Heat to discuss retrofitting their

house with a system. John Blatner informed petitioners that he had spoken with Ashley from the Division regarding whether a ground source heat pump system qualified for the solar energy credit (***see*** finding of fact 10).

15. Prior to preparing petitioners' 2012 income tax returns, Ms. Spencer contacted the Division's taxpayer assistance call center in early 2013 to inquire whether a ground source heat pump system qualified for the solar energy credit. Ms. Spencer testified that she was informed by a first line responder and that person's supervisor that the ground source heat pump system qualified for the solar energy credit. Ms. Spencer did not obtain the name of the people with whom she spoke and she did not request an advisory opinion from the Division.

16. On March 30, 2017, Capital Heat revised the invoice dated December 17, 2012, in response to a request from Ms. Spencer to itemize the charges for each component of the system installed in petitioners' home. The revised invoice shows the following charges totaling $42,590.00: $7,600.00 for engineering services, site preparation, drilling and reclamation; $9,105.00 for a 3-ton 7 series water furnace with variable pump/compressor/heater; $3,008.00 for 1 ½ ton NSW water heater/heat pump/compressor; $2,400.00 for ground heat exchanger pipe and grout; $16,427.00 for labor and installation; and $4,050.00 for duct modifications.

17. Petitioners submitted an affidavit dated March 10, 2017 from Samara Levine, chief solar designer for American Solar Partners. Ms. Levine designed a photovoltaic system that was installed at petitioners' home in 2013. Ms. Levine states that the photovoltaic system includes inverters that, during the day, convert DC power produced by the solar panels into AC power for use in the home or transfer back to the electrical power grid. At night, the inverters are powered by electricity from the utility grid to enable monitoring of the system 24 hours a day. The

monitoring equipment is powered by electricity from the utility grid.

18. In 2015, the New York State Legislature failed in an attempt to amend Tax Law § 606, to add a tax credit expressly for geothermal energy systems (2015 NY Senate-Assembly Bill S2905, A2177-A). The proposed legislation defined "geothermal energy system equipment" as a "ground coupled solar thermal system that utilizes the solar thermal energy stored in the ground or in bodies of water to produce heat, and which is commonly known as or referred to as ground source heat pump system" (***id.***). The proposed legislation passed both houses of the Legislature, but was vetoed by the governor on the grounds that "it is premature to provide incentives for geothermal energy systems without fully appreciating how those incentives will fit within the State's broader policy framework" and that such incentive would have a "significant revenue impact" (Governor's Veto Jacket Collection, L 2015, Veto Message No. 251).

19. Petitioners introduced into evidence correspondence dated May 19, 2017 from New York State Senator Robert G. Ortt, which stated in part:

> "Prior to drafting [Senate Bill 2905], those involved on the issue believed that GSHP [ground source heat pump] systems should qualify for a tax credit under New York State Tax Law § 606(g-1), which grants tax credits for solar energy equipment, and that new legislation was not needed. However, we were told by the New York State Tax Department Counsel's Office that GSHP systems were not eligible for the solar tax credit under § 606(g-1).
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> Because of this interpretation from the New York State Tax Department Counsel Office's [sic], I sponsored Senate Bill 2905 in 2015, which would have established a separate distinct energy tax credit for ground source heat pump systems (GSHPs), which provide heating and cooling in residential homes. The bill was subsequently vetoed by Governor Cuomo as was a similar bill the following year."

20. Petitioners introduced into evidence correspondence dated January 4, 2016 from New York State Assembly Member Sean M. Ryan, which stated, in part:

> "In 2015, I introduced a bill (A.2177) which called for the establishment of a geothermal tax/ground source heat pump credit in New York. This bill passed both the Assembly and the Senate, eventually being vetoed by Governor Cuomo. I have been asked to provide the reasoning which led me to draft, introduce, and advocate for this bill.
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> ***
>
> Originally, it was suggested to me that geothermal tax credits are already available to New Yorkers under the solar energy tax credit currently established in New York. While I will leave the debate as to whether geothermal products qualify as solar equipment to others, it does not change the fact that I drafted bill A.2177 with the understanding that geothermal may already qualify for tax breaks. I proceeded with the introduction and advocacy of this bill for two purposes: 1) to solidify the establishment of the tax credit for geothermal, and 2) to allow individuals to utilize both a distinct geothermal tax credit as well as a solar tax credit."

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge began her determination by reviewing the Tax Law provision related to the solar energy system equipment credit. She reviewed case law and Tribunal decisions providing the requirements to demonstrate entitlement to a tax credit and discussed the burden of proof necessary to establish entitlement to a statutory benefit such as a tax credit. She determined that petitioners have the burden to establish unambiguous entitlement to the tax credit and that their interpretation of the tax credit statute must be the only reasonable construction. She cited to two previous Tribunal decisions that addressed the identical issue as the one presented in this matter and determined that a strict and narrow construction of the tax credit statute excludes ground source heat pumps from its benefits. She noted that the Tribunal's previous decision, which found that the 2015 legislative bill that was vetoed by the Governor would have amended the law to add a new tax credit expressly for geothermal energy systems, supports the conclusion that the existing tax credit does not include ground source heat pumps (GSHPs) in its definition. She found that the correspondence submitted by petitioners from

Assemblymember Ryan and Senator Ortt was insufficient to support petitioners' proposed interpretation of the tax credit statute. She denied the petition and sustained the notice of deficiency.

ARGUMENTS ON EXCEPTION

On exception, petitioners continue to argue that their GSHP system uses solar radiation to provide heat and hot water for their house and thus qualifies for the solar energy system equipment tax credit. They contend that the absence of specific language regarding GSHPs demonstrates how "broad, simple and non-specific" the current statute is. They argue that GSHP systems and solar thermal systems use solar radiation in the same way and that the Tribunal's requirement that a solar energy system must use solar energy directly is not a rational narrowing of the statute. They contend that GSHP technology satisfies the plain language of the tax credit statute and fulfills the statute's purpose and the Legislature's intention to encourage homeowners to invest in renewable energy technology that replaces fossil fuel with solar radiation.

Petitioners also argue that the proposed 2015 legislation to expressly provide a tax credit for GSHPs would have provided a *separate*, but not *new* tax credit for GSHPs. Further, they assert that the Division should not be permitted to argue that the failed 2015 legislation proves that the existing credit does not include GSHPs, as they assert that the only reason the 2015 legislation was introduced was because of the Division's misinterpretation of the existing statute.

Petitioners also take exception to the Division's changing reasons for the denial of the tax credit from "geothermal systems do not qualify for the credit since these systems use energy stored within the earth's core" to " [t]he law does not mention equipment which draws thermal energy stored in the earth which may or may not have originated from solar radiation," to a

statement that the credit was denied because GSHP systems use electricity. Petitioners argue that the Administrative Law Judge failed to acknowledge that their system installer and petitioner Karen Spencer were assured by Division employees that a GSHP system qualifies for the solar energy equipment system tax credit.

Petitioners contend that the record in the instant proceeding contains evidence that was absent from the records in ***Matter of Grimm***, Tax Appeals Tribunal, January 11, 2018 and ***Matter of Li***, Tax Appeals Tribunal, May 8, 2017, and they urge the Tribunal to give this tax credit a fresh look based on the record below and a plain language reading of the statute.

As in the proceeding below, the Division argues that GSHP systems were not contemplated by the Legislature as qualifying for the solar energy system equipment credit in Tax Law § 606 (g-1) and, therefore, petitioners' exception should be denied and the notice of deficiency issued to petitioners should be sustained. The Division contends that the publications submitted by petitioners and the testimony of petitioners' own expert witness confirm that the terms "solar" and "solar energy" typically refer only to systems that make direct use of solar radiation. In contrast, it argues, GSHPs are mostly described as using energy from the ground. The Division further argues that petitioners, themselves, distinguish between the operation of a GSHP system and a traditional solar thermal system by stating that "in a GSHP system, the earth acts as a collector of solar infrared radiation, just as a collector in a solar thermal heating system uses infrared radiation." The Division asserts that the ground cannot be considered a component of a GSHP, since it is not a piece of equipment that can be installed in a residence (as required by Tax Law § 606 (g-1) (3), but rather is a part of the natural environment surrounding the home. Therefore, it contends that GSHPs should not be considered to "utilize solar radiation" because

these systems do not include solar collector components that absorb solar radiation.

The Division disputes petitioners' claim that GSHP systems meet the stated purpose of the statute because they use renewable energy as opposed to fossil fuels, and because they are more efficient than solar energy systems, which require sunlight to function. It argues that the legislative history clearly indicates that the credit was intended to encourage taxpayers to invest in equipment utilizing solar radiation specifically; not simply to invest in renewable energy systems that would have positive effects on the environment. It argues that because tax credit statutes must be construed strictly and narrowly, extending the definition of solar energy systems to other renewable energy systems would be inappropriate.

The Division also takes issue with petitioners' introduction of letters from the sponsors of the failed 2015 legislative attempt to expressly provide a tax credit for GSHP systems. It contends that reliance on the views of the bill's sponsors expressed after the bill in question was passed should not be given much weight in statutory construction, when as in this case, there is no indication that the other legislators who voted for the bills were aware of the sponsors' intent. The Division disputes petitioners' claim that the record indicates that most government agencies consider GSHP systems to be solar energy system equipment. The Division also contests petitioners' reliance on the purported statements of Division employees. The Division asserts that, even if the expert witness' testimony is found to be credible, it questions if the employees had adequate information on which to base their opinion. The Division states that the rationale for the Tribunal's decision in ***Matter of Li*** is clearly stated – that the plain language of the tax credit statute did not encompass GSHPs because they do not directly utilize solar radiation and that decision should be followed in this case.

OPINION

As a preliminary matter, we address petitioners' claim that they relied on statements from Division personnel that GSHP systems qualify for the solar energy system equipment tax credit in Tax Law § 606 (g-1). The Administrative Law Judge did not address this issue in her determination.

While not specifically addressed as such, petitioners appear to be arguing that the Division is estopped from denying the tax credit at issue here. As a general proposition, the doctrine of estoppel is not applicable to governmental acts absent a showing of exceptional facts which require its application to avoid a manifest injustice (***Matter of Sheppard-Pollack, Inc. v Tully***, 64 AD2d 296 [3d Dept 1978]). This rule is particularly applicable with respect to a taxing authority since sound public policy favors full and uninhibited enforcement of the tax laws (***Matter of Turner Constr. Co. v State Tax Commn.***, 57 AD2d 201 [3d Dept 1977]). Thus, the application of the estoppel doctrine as it applies to tax matters must be rare and limited to truly unusual fact situations (***Schuster v Commissioner***, 312 F2d 311, 317 [1962]; ***Matter of Harry's Exxon Serv. Sta.***, Tax Appeals Tribunal, December 6, 1988). Further, the tendency against government estoppel is particularly strong where the official's conduct involves questions of essentially legislative significance, as where he conveys a false impression of the law (***Schuster v Commissioner***, 312 F2d at 317).

This Tribunal has embraced a three-part test to determine applicability of the doctrine to specific cases (***Matter of Consolidated Rail Corp.***, Tax Appeals Tribunal, August 24, 1995). We ask if petitioner had the right to rely on the Division's representation; whether, in fact, there was such reliance; and whether such reliance was to the detriment of petitioner (***Matter of AGL***

Welding Supply Co., Tax Appeals Tribunal, May 11, 1995, ***confirmed Matter of AGL Welding Supply Co. v Commissioner of Taxation & Fin.*** 238 AD2d 734 [3d Dept 1997]; ***see also Matter of Harry's Exxon Serv. Sta.***).

The first issue to address is whether petitioners were entitled to rely on verbal statements of Division personnel that GSHP systems qualify for the solar energy system equipment tax credit. At the hearing, petitioners presented the installer of their GSHP system who testified that in March 2012, he contacted the Division's Buffalo office and spoke to a tax assistance representative named "Ashley" with badge number 55049 (The Division did not contest that such a person with that name and badge number was employed by Division at that time). He was told by "Ashley" that GSHPs qualify for the tax credit. He received no confirmation in writing and did not ask for a written advisory opinion. Additionally, petitioner Karen Spencer testified that in early 2013, she contacted the Division's taxpayer assistance telephone number and was assured by an employee and his supervisor that GSHPs qualify for the tax credit. Petitioner received no confirmation in writing and did not request a written advisory opinion from the Division. Petitioners argue that they relied on those assurances when deciding to purchase and install the GSHP system at their residence.

Viewing the evidence in a light most favorable to petitioners, we cannot find that petitioners had a right to rely on the verbal assurances of Division employees with respect to the interpretation of Tax Law § 606 (g-1) and, particularly, the definition of solar energy system equipment in Tax Law § 606 (g-1) (3) (***see Schuster v Commissioner***). First, because neither the request for interpretation of the statute nor the responses from the Division's representatives was in writing, there is no way to verify the information the installer and petitioner provided to the

Division's representatives, how the GSHP system was described, or what the Division representatives stated. Furthermore, petitioners' asserted reliance on the installer's statements regarding his conversation with the Division was not reasonable, since they were not a party to the conversation and could not themselves verify any details about the conversation.

Having found that it was not reasonable for petitioners to rely on the verbal assurances of Division personnel, it is not necessary to address the remaining elements of the test, but we note for the record that petitioner Karen Spencer's conversations with the Division occurred in early 2013 (***see*** finding of fact 15). Those assurances, while purportedly confirming the information told to the installer, could not be a basis for petitioners' reliance as they were provided after the GSHP system was installed in late 2012. Finally, we are unaware of any particular detriment sustained by petitioners in reliance on the Division's statements. There is no indication in the record that petitioners would have chosen a different system to replace their natural gas furnace absent the availability of the tax credit (***see*** finding of fact 14). Advisory opinions are authorized by subdivision 24 of section 71 of the Tax Law and are addressed in detail in 20 NYCRR 2376. Petitioners could have sought a written advisory opinion from the Division in order to ascertain whether a credit for expenditures to install a GSHP system would have been allowed under Tax Law § 606 (g-1).

Turning to the main issue to be decided, for the reasons that follow, we affirm the determination of the Administrative Law Judge.

Tax Law § 606 (g-1) provides for a tax credit of 25% of qualified solar energy system equipment expenditures, not to exceed $5,000.00, for qualified solar energy equipment placed in

service in a primary residence in New York on or after September 1, 2006. For purposes of the credit, Tax Law § 606 (g-1) (3) defines solar energy system equipment, in relevant part, as:

> "an arrangement or combination of components utilizing solar radiation, which, when installed in a residence, produces energy designed to provide heating, cooling, hot water or electricity for use in such residence. Such arrangement or components shall not include equipment connected to solar energy system equipment that is a component of part or parts of a non-solar energy system or which uses any sort of recreational facility or equipment as a storage medium."

Tax credit statutes, such as the one at issue, are similar to and should be construed in the same manner as statutes creating tax exemptions (***see Matter of Piccolo v New York State Tax Appeals Trib***., 108 AD3d 107 [3d Dept 2013]). That is, such statutes must be strictly and narrowly construed against the taxpayer (***see e.g. Matter of Costco Wholesale Corp***., Tax Appeals Tribunal, March 6, 2017). However, construction of an exemption or credit statute should not be so narrow as to defeat the provision's settled purpose (***Matter of Grace v New York State Tax Commn.***, 37 NY2d 193, 196 [1975], ***rearg denied*** 37 NY2d 816 [1975], ***lv denied*** 338 NE2d 330 [1975]). Like all taxing statutes, an exemption or credit statute should be construed in a practical fashion (***see Matter of Qualex, Inc.***, Tax Appeals Tribunal, February 23, 1995).

Petitioners have the burden to establish "unambiguous entitlement" to the claimed statutory benefit (***Matter of United Parcel Serv., Inc. v Tax Appeals Trib. of the State of N.Y.***, 98 AD3d 796, 798 [3d Dept 2012], ***lv denied*** 20 NY3d 860 [2013]). Indeed, petitioners must prove that their interpretation of the statute is not only plausible, but also that it is the only reasonable construction (***Matter of American Food & Vending Corp. v New York State Tax Appeals Trib***., 144 AD3d 1227 [3d Dept 2016]). Reviewing the subject tax credit statute and the facts of this proceeding, we find that petitioners have not met that burden.

As we previously decided in ***Matter of Li*** and ***Matter of Grimm***, a strict and narrow construction of the solar energy system equipment credit statute reasonably excludes geothermal systems from its benefits. Nothing in the present matter causes us to diverge from the reasoning in those decisions. Even though solar radiation may be the source of heat in the ground that is harnessed by the GSHP system (***see*** finding of fact 11), we find insufficient evidence in the record or the legislative history of Tax Law § 606 (g-1) to convince us that the Legislature contemplated equipment that captures ground source heat to be within the definition of solar energy system equipment. As we stated in ***Grimm***, ". . . in our view, a distinction between solar energy systems, which use solar energy directly, and geothermal energy systems, which use ground source heat, is rational for purposes of the solar energy credit."

Notwithstanding petitioners' contention to the contrary, the failed 2015 amendment to Tax Law § 606 also supports the conclusion that Tax Law § 606 (g-1) as enacted does not include GSHP systems within its purview. As noted above, the proposed change would have added a credit expressly for geothermal energy systems (***see*** finding of fact 18; ***see also*** 2015 NY Senate-Assembly Bill S2905, A2177A). Petitioners contend that GSHP systems were already included within the definition of solar energy system equipment in Tax Law § 606 (g-1) (3) and that the proposed change simply would have added a separate and additional tax credit for GSHP systems. We cannot agree. It is a fundamental rule of statutory construction that "[w]hen the Legislature amends a statute, it is presumed that the amendment was made to effect some purpose and make some change in the existing law" and that "[b]y enacting an amendment of a statute and changing the language thereof, the Legislature is deemed to have intended a material change in the law" (***see Matter of Stein***, 131 AD2d 68, 72 [2d Dept 1987], ***appeal dismissed*** 72

NY2d 840 [1988]; ***see also*** McKinney's Cons Laws of NY, Book 1, Statutes §§ 191, 193). "Moreover, a statute will not be held to be a mere reenactment of a prior statute if any other reasonable interpretation is attainable" (***id.***). While the proposed amendment did not become law, it is nevertheless an indication that the Legislature believed that Tax Law § 606 (g-1), as enacted, does not include a credit for GSHP system equipment. Indeed, the Senate's memorandum in support of the proposed amendment states that the purpose of the proposed change is to "*extend* tax credits to cover the purchase and installation costs of geothermal energy systems" (Memorandum in Support, NY Senate Bill S2905 [emphasis added]). The Governor's veto message also indicates that existing law does not include GSHP systems (***see*** Governor's Veto Jacket Collection, L 2015, Veto Message No. 251 ["it is premature to provide incentives for geothermal energy systems without fully appreciating how those incentives will fit within the State's broader policy framework" and such incentives would have a "significant revenue impact"]). Indeed, nothing in the legislative history of the failed amendment indicates that it was necessary to correct or clarify that the Legislature intended Tax Law § 606 (g-1), as enacted, to include a credit for GSHP system equipment. The failed amendment thus supports our construction of the solar energy system equipment credit as in effect in 2012.

In support of their position, petitioners introduced letters from the Assembly and Senate sponsors of the failed 2015 amendment. The letter from Assemblymember Ryan, dated January 4, 2016, had also been introduced in ***Matter of Grimm***. The letter from Senator Ortt is dated May 19, 2017. For the same reason that we concluded in ***Grimm***, these letters provide little support to petitioners' proposed interpretation of Tax Law § 606 (g-1). A statement regarding legislative intent, made by the sponsor of a bill is properly given little weight when, as

here, such a statement is "not made during floor debate and there is no showing that other legislators were aware of its scope" (***Kruger v Page Mgt. Co.***, 105 Misc 2d 14, 25 [Sup Ct NY Cty 1980] citing ***Matter of Delmar Box Co. [Aetna Ins. Co.]***, 309 NY 60, 67 [1955]; ***see also Matter of Knight-Ridder Broadcasting v Greenberg***, 70 NY2d 151, 159 [1987] ["The views of one legislator . . . are not necessarily revealing of legislative intent."]). Furthermore, the sponsors' memorandum in support of the failed 2015 amendment gives no indication that the proposed amendment was intended to explain some ambiguity in the existing statute (***see*** McKinney's Cons Laws of NY, Book 1, Statutes § 193 [b]). The letters are thus insufficient to overcome the presumption that, by proposing the 2015 amendment, the Legislature intended to add a new tax credit for geothermal systems because one did not already exist. Furthermore, we reject petitioners' argument that the Division should not be permitted to argue that the failed 2015 legislative amendment indicates that GSHPs are not included in the existing tax credit.

As we have concluded that petitioners' GSHP is not solar energy system equipment as defined in Tax Law § 606 (g-1) (3), it is not necessary for us to address the argument that petitioners' GSHP system qualifies for the credit because it is not connected to a conventional heating or cooling system or a recreational facility. Finally, we have considered petitioners' argument on exception that the Division changed its reasoning for the denial of the tax credit for their GSHP system. We find that the Division's position that GSHP systems are not included within the purview of Tax Law § 606 (g-1) has been consistent throughout this proceeding and that petitioners have had due notice of the Division's reasons for the denial and have attempted to rebut them. Therefore, we find that petitioners have not been prejudiced by any perceived changes in the rationale for the Division's denial.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Paul J. Suozzi and Karen L. Spencer is denied;

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

3. The petition of Paul J. Suozzi and Karen L. Spencer is denied; and

4. The notice of deficiency dated November 16, 2015 is sustained.

DATED: Albany, New York
January 24, 2019

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Anthony Giardina
Anthony Giardina
Commissioner