

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

JOSEPH S. PUGLISI AND LINDA D. PUGLISI

DECISION

for Redetermination of a Deficiency **or** for  
Refund **of** Personal Income Tax under Article 22 :  
**of** the Tax Law for the Year 1980.

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Petitioners, Joseph S. Puglisi and Linda D. Puglisi, P.O. **Box** 335, Forest Lane, Crompond, New **York** 10517, filed a petition for redetermination of a deficiency **or** for refund of personal income tax under Article 22 of the Tax Law for the year 1980 (File No. 53164).

On July 5, 1986, petitioners waived their right to a hearing and requested that the State Tax Commission render a decision based on the entire record contained in their file, including all briefs which were to be filed by August 25, 1986. After due consideration, the State Tax Commission hereby renders the following decision.

#### ISSUES

I. Whether the Audit Division properly disallowed petitioners' claimed mortgage recording tax credit of **\$447.50**.

II. Whether Tax Law §606(f), which provides for the mortgage recording tax credit, violates the 14th Amendment of the United States Constitution.

#### FINDINGS OF FACT

1. Petitioners, Joseph S. Puglisi and Linda D. Puglisi, timely filed a joint New **York** State Income Tax Resident Return **for** 1980 whereon they claimed a mortgage recording tax credit **of** **\$447.50**.

2. On February 8, 1984, the Audit Division issued a Statement of Audit Changes to petitioners for the year 1980 disallowing the claimed mortgage recording tax credit of \$447.50. Said statement contained the following explanation:

"A review of your return indicates that you did not purchase property which qualifies for the special additional mortgage recording tax credit. Mortgage recording tax paid in connection with the purchase of a personal residence does not qualify for this credit. Based on the available information the credit has been disallowed."

3. Based on the aforementioned statement, the Audit Division, on April 5, 1984, issued a Notice of Deficiency to petitioners for 1980. Said notice asserted additional tax due of \$447.50, plus interest of \$160.17, for a total allegedly due of \$607.67.

4. During the year 1980, petitioners purchased a single family residence and, in connection with said purchase, apparently paid mortgage recording tax of \$447.50. The record herein does not disclose how the mortgage recording tax of \$447.50 was computed or under what section or sections of Article 11 (Tax on Mortgages) said tax was imposed.

5. It is petitioners' position that Tax Law §606(f) violates the 14th Amendment of the United States Constitution in that it allows a credit for the special additional mortgage recording tax paid with respect to structures containing more than six residential dwelling units with separate cooking facilities and does not allow a credit with respect to the purchase of a single family residence.

#### CONCLUSIONS OF TAW

A. That Tax Law §606(f) provides, in pertinent part, that the mortgage recording tax credit shall:

"be the excess of the amount **of** the special additional mortgage recording tax paid by the taxpayer pursuant to the provisions of subdivision one-a of section two hundred fifty-three **of** this chapter ...over the amount of any credit allowed under subsection (g) of section seven hundred one of this chapter." (Emphasis added.)

B. That Tax Law §253.1-a(a) provides for the imposition of a special additional mortgage recording tax on all mortgages of real property located in New York recorded on or after January 1, 1979. Said section provides, in pertinent part, that:

"The tax imposed by this subdivision shall in cases of real property improved by a structure containing **six** residential dwelling units or less with separate cooking facilities be paid by the party making the loan secured by such mortgage, and such tax shall not be paid or payable, directly or indirectly by the borrower". (Emphasis added.)

C. That in the instant matter, petitioners have failed to show that they paid any special additional mortgage recording tax imposed by Tax Law §253.1-a(a). Moreover the special additional mortgage tax imposed by said section would, in the case of a mortgage on a single family residence, be paid by the party making the loan and not by the borrower. Accordingly, the Audit Division properly disallowed petitioners' claimed mortgage recording tax credit of \$447.50.<sup>1</sup>

D. That the constitutionality **of** the laws of the State **of** New York are presumed at the administrative level.

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1 Petitioners may have been subject to and paid the mortgage recording tax imposed by Tax Law §§**253.1** and 253.2(a); however, Tax Law §606(f) allows a credit only for the special additional mortgage recording tax imposed

E. That the petition of Joseph S. Puglisi and Linda D. Puglisi is denied and the Notice of Deficiency dated April 5, 1984 is sustained, together with such additional interest as ~~may~~ be lawfully due and owing.

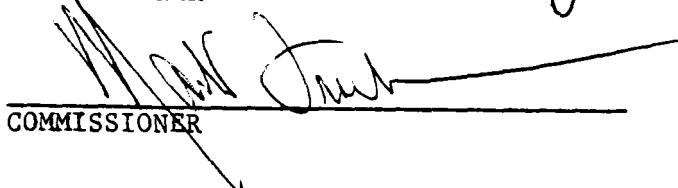
DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT

  
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COMMISSIONER

  
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COMMISSIONER