

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Anne Crociata : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income Tax :
under Article 22 of the Tax Law for the Year 1981. :
:

State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 8th day of November, 1985, he served the within notice of Decision by certified mail upon Anne Crociata, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anne Crociata
19 N. Clinton Ave.
Bay Shore, NY 11706

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
8th day of November, 1985.

David Parchuck

Ann M. O'Hagerty
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Anne Crociata : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1981.

State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 8th day of November, 1985, he served the within notice of Decision by certified mail upon Mindy S. Fridovich, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mindy S. Fridovich
Nassau/Suffolk Law Services, Mental Health Law Project
28 Park Ave.
Bay Shore, NY 11706

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
8th day of November, 1985.

David Parchuck

James J. O'Hagan
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 8, 1985

Anne Crociata
19 N. Clinton Ave.
Bay Shore, NY 11706

Dear Ms. Crociata:

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) 690 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Mindy S. Fridovich
Nassau/Suffolk Law Services, Mental Health Law Project
28 Park Ave.
Bay Shore, NY 11706
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ANNE CROCIATA	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1981.	:	

Petitioner, Anne Crociata, South Shore Villa Home for Adults, 19 North Clinton Avenue, Bay Shore, New York 11706, 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 1981 (File No. 50974).

On April 4, 1985, petitioner, by her representative Nassau/Suffolk Law Services Committee, Inc., Mental Health Law Project (Mindy S. Fridovich, Esq. and Mary Ellen Klein, Esq., of counsel), waived a hearing before the State Tax Commission and requested the Commission to render its decision, based on the Department of Taxation and Finance file as presently constituted, a stipulation of facts executed by petitioner's representative on May 10, 1985 and by counsel to the Audit Division, John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel), on June 14, 1985, and briefs to be submitted by July 29, 1985.

By agreement of the parties' representatives, this decision will be binding upon seventy-nine (79) similarly situated petitioners, whose names are set forth in Appendix A to this decision.

ISSUE

Whether petitioner, a resident of an adult care facility, was entitled to claim the real property tax circuit breaker credit provided by Tax Law section 606(e).

FINDINGS OF FACT

1. For the taxable year 1981, petitioner, Anne Crociata, submitted to the Audit Division a claim for the real property tax circuit breaker credit provided by Tax Law section 606(e). She had received the application in the mail and believed it was forwarded to her by the Department of Taxation and Finance. She was assisted in filing the claim by a worker from a local social services agency. Sometime subsequent to submitting her claim, petitioner received a refund from the department in the sum of \$45.00.

2. On January 5, 1984, the Audit Division issued to petitioner a Notice of Deficiency, asserting personal income tax due under Article 22 for the year 1981 in the amount of \$45.00, with accrued interest, to recover the refund previously allowed. (Seventy-eight of the seventy-nine remaining petitioners similarly received the credit in varying amounts and were thereafter issued notices of deficiency. The Audit Division denied the claim for credit filed by petitioner Anthony Rupolo and in this proceeding, he seeks reversal of the denial and grant of his refund.)

3. Petitioner is sixty-eight years of age. She is presently, and was at the time of her application, a resident of New York.

4. From July, 1975 through June, 1976, petitioner was hospitalized at the Pilgrim Psychiatric Center following the sudden death of her husband. Since June, 1976, petitioner has resided at the South Shore Villa Home for Adults, a private, proprietary adult home ("adult home"). An adult home is an adult care facility operated for profit and compensation and is subject to real property taxes. It provides room, board, housekeeping, personal care services and supervision to five or more adults unrelated to the facility's operator (Social Services Law section 461 et seq.; 18 NYCRR 487.2), and is certified for operation

and regulated by the New York State Department of Social Services, Division of Adult Services (Social Services Law section 460-c). During the entire period of her residence at the adult home, petitioner has lived in the same room which she shares with another woman.

5. Petitioner receives \$639.86 per month in Supplemental Security Income and Social Security benefits. She has no other assets, income or resources.

6. When petitioner commenced her residence at the South Shore Villa (formerly known as the Anderson Home) in June, 1976, she executed an admission agreement with the operator, whereby she agreed to pay an established amount of monthly charges in return for her furnished room; three meals per day; house-keeping, linen and janitorial services; personal non-medical care and supervision on a twenty-four hour basis; and psychiatric case management services. Her monthly charges currently total \$562.93.

7. At the beginning of each month, petitioner receives her Social Security and Supplemental Security Income checks at the South Shore Villa, endorses them at the home's financial office and gives them to the home in satisfaction of the monthly charges. She thus retains \$76.93 each month from the checks as her personal allowance. She is provided with written receipts for the monies paid over to the South Shore Villa.

8. The room rented to petitioner and the furnishings therein are provided for the exclusive use of petitioner and her roommate.

9. In the event that the owner/operator acted to terminate petitioner's admission agreement, possession of the premises rented by petitioner could be gained only by the owner/operator's commencement of summary proceedings for eviction against petitioner.

10. The adult home is considered a multiple dwelling type B(4) as defined in the New York State Uniform Fire Prevention and Building Code.

11. Petitioner was not claimed as a dependent on another person's Federal income tax return for the taxable year 1981, she was not a member of more than one household during 1981, nor was she related to the other residents of the South Shore Villa.

12. The Claim for Real Property Tax Credit (form IT-214) as published for taxable year 1981 did not inquire whether the taxpayer resided in a nursing home. The claim form for 1982 was modified to include such inquiry. The claim form for 1983 continued the inquiry and in the instructions for completion of the forms stated, "Generally, residents of nursing homes and public housing projects do not qualify for this credit" (emphasis in original).

CONCLUSIONS OF LAW

A. That by virtue of subsection (e) of Tax Law section 606, a credit against the taxes imposed by Article 22 is available to qualified taxpayers, equal to fifty percent of "excess real property taxes". For the taxable year in question, when petitioner had not yet attained the age of 65, the amount of "excess real property taxes", and hence the amount of the credit, was determinable under the provisions of section 606(e)(3)(ii); the maximum amount of the credit allowable in 1981 was \$45.00. The credit is available to renters of residences subject to real property taxes, as well as to owners of properties subject to such taxes. The statute requires the lessee to compute his or her credit by reference to the "real property tax equivalent", and where lessees share a residence as cotenants, to apportion the rental payment for purposes for calculating the equivalent.

"'Real property tax equivalent' means twenty-five percent of the adjusted rent actually paid in the taxable year by a household solely for the right of occupancy of its New York residence for the taxable year. If (A) a residence is rented to two or more individuals as cotenants, or such individuals share in the payment of a single rent for the right of occupancy of such residence, and (B) each of such individuals is a member of a different household, one or more of which individuals share such residence, real property tax equivalent is that portion of twenty-five percent of the adjusted rent paid in the taxable year which reflects that portion of the rent attributable to the qualified taxpayer and the members of his household." Section 606(e)(1)(vi).

The theory underlying the extension of tax relief to lessees is that, at least to some extent, the rental payments reflect the landlord's property tax cost and lessees therefore bear the incidence of the property tax.

B. That the parties agree that petitioner satisfies the following criteria for entitlement to the real property tax circuit breaker credit: petitioner was a resident of this state; petitioner occupied the same residence for at least six months during the taxable year 1981; at the time of her claim, petitioner did not pay in excess of \$300.00 in monthly charges for her room; petitioner was not claimed as a dependent on another's Federal income tax return for 1981; petitioner was not a member of more than one household during 1981; petitioner did not have an adjusted gross income in excess of \$13,500.00 for 1981; petitioner is unrelated to the other residents who reside in the same adult home; the adult home petitioner resides in is subject to property taxes; and the adult home petitioner resides in is considered a multiple dwelling as defined in New York's Uniform Fire Prevention and Building Code. The Audit Division maintains that petitioner was ineligible for the credit by her failure to meet one criterion: her household gross income exceeded \$13,500.00, considering all the residents of South Shore Villa to comprise one household. The matter thus turns upon the definition of "household".

C. That section 606(e)(1)(ii) defines the term "household" as follows:

"'Household' or 'members of the household' means a qualified taxpayer and all other persons, not necessarily related, who have the same residence and share its furnishings, facilities and accommodations. Such terms shall not include a tenant, subtenant, roomer or boarder who is not related to the qualified taxpayer in any degree specified in paragraphs one through eight of subsection (a) of section one hundred fifty-two of the internal revenue code. Provided, however, no person may be a member of more than one household at one time."

"Residence" is defined by subparagraph (iv) of the same paragraph as follows:

"'Residence' means a dwelling in this state, whether owned or rented, and so much of the land abutting it, not exceeding one acre, as is reasonably necessary for the use of the dwelling as a home, and may consist of a part of a multi-dwelling or multi-purpose building including a cooperative or condominium, and rental units within a single dwelling..."

The latter term refers to a place, while the former designates one economically interdependent group of persons, comprised of the qualifying taxpayer and those who participate in the use and enjoyment of the residence in which the taxpayer resides.

D. That petitioner's household consists of all the residents of the adult home wherein she resides, considering the relationship between the residents and the owner/operator and the facilities and services rendered to the residents by the owner/operator (Finding of Fact "6"). This conclusion is directly buttressed by the statutory definition and also finds support in Fischer v. Taub (127 Misc.2d 518 [Sup. Ct., App. Term, 1st Dept., 1984]), which explored the relationship between the residents and operator of an adult home for purposes of the New York City Rent Stabilization Law.

"The only relationship of 'legal interdependence' here sufficient to support the 'maintenance of a household' is that between the operator and the residents (People v. Allen, 27 N.Y.2d 108; Matter of Potter v. Bennett, 40 A.D.2d 546). It is the operator who is required by statute and regulation to provide not only shelter, food and house-keeping services, but also a program of dietary supervision, assistance with grooming, dressing, bathing and eating for each resident where necessary, as well as supervise recreation, maintenance of

financial records, and help to the residents in obtaining governmental assistance and medical care (18 NYCRR part 488). Therefore, it is the operator, not the resident, who 'maintains a household'. (Matter of Surbeck, 185 Misc. 635; Matter of Wells, 165 Misc. 385; Clark v. Clark, 23 Misc. 272, 287; compare, Domestic Relations Law §236; Family Ct. Act §§412, 413.)" Id. at 524.

Furthermore, the court negated the possibility of the existence of a landlord-tenant relationship between the parties.

"Even if some doubt might otherwise be said to exist concerning the nature of the legal relationship between the petitioner as operator of the facility and the individual respondents as residents of the facility, that issue is resolved for us by Social Services Law §461-h(15) and RPAPL 713-a, at least to the extent of precluding the existence of a landlord-tenant relationship between the parties. Both Social Services Law §461-h(15) and RPAPL 713-a provide in essence that nothing contained in Social Services Law article 7 shall be construed to create a relationship of landlord and tenant between an operator of an adult home or residence for adults and residents thereof." Id. at 526.

Aggregation of the income of all members of petitioner's household results in a household gross income in excess of \$13,500.00. Petitioner was therefore properly denied the circuit breaker credit.

E. That the petition of Anne Crociata is hereby denied, and the Notice of Deficiency issued against her on January 5, 1984 is sustained.

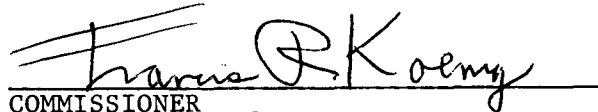
DATED: Albany, New York

STATE TAX COMMISSION

NOV 08 1985



PRESIDENT



COMMISSIONER



COMMISSIONER

APPENDIX A

PETITIONERS

<u>NAME</u>	<u>TAB NO.</u>
Florence Alexander	50969
Anastasia Bakan	50966
Paula Baker	50979
Theresa Baker	51061
Albert Barnes	51001
Harry Bernstein	50965
Carol Bickford	50978
Florence Bittrolff	51005
Vivian Brandwein	50984
Hannah Buckstein	50340
Antonio Burke	51000
Robert E. Bynum	51069
Catherine Clancey	50977
Margie R. Cokos	50976
Andrienne Conway	50999
Catherine Cosentino	50985
Dennis W. Cozier	50975
Josephine Dafflitti	50998
Barbara Dello Eacono	50973
Mary C. Dethlefsen	50983
Bessie Dorin	51082
Veronica C. Duane	51070

<u>NAME</u>	<u>TAB NO.</u>
Margaret Frank	50982
Alma Griggs	51071
Frank Hall	50997
Mary C. Harrigan	51002
Theresa Heineman	51062
Muriel Hendrick	51083
Irma Hilmer	51063
Bruce D. Idol	51072
Mary Ippolito	50996
Richard Jablin	51008
Virginia Jones	51014
William Kaplan	50995
Hildegard Klahn	51064
Franciszek Korszyn	51073
May Lantry	51065
Gessina M. LaRue	50993
Leatrice Liljehult	51066
Jennie Locagnata	51067
Anna Malloy	51074
William Marrero	50972
Gilbert A. Martin	50994
Madeline Massano	51058
James McConnell	50992
Mary McHurst	51006

<u>NAME</u>	<u>TAB NO.</u>
Matilda Meuschke	50971
Dora Mlenak	51068
James Munro	50991
Anna Marie O'Born	50981
Salvatore Patane	51075
Francis A. Popp	50980
Marion R. Procheck	51076
Ralph R. Raynor	50990
Rose Reinhardt	50989
Helen Remington	51078
William Romero	51079
Gertrude Ross	53595
Anthony Rupolo	53134
Margaret Russ	50970
Peter Ryback	51012
Irene R. Rydlewski	51007
Sadie Sandberg	50967
Edith Sanferrare	51011
Leroy Scalettar	51010
Josephine Scarabaggio	51013
Paul Schommers	50108
Steven P. Schulz	51084
Dorothy Sloan	51059
Lula M. Stidwell	51009

<u>NAME</u>	<u>TAB NO.</u>
Ellen Suckel	51060
Pasqual Tanderjian	51080
John Valentine	51085
Helen Weber	51003
Nina Werpachowski	51081
Mary Whitcomb	50988
Sam Yanofsky	50968
Peter Zelenski	51004
Lillian Zweigenthal	50987