

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Joseph S. & Linda D. Puglisi :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income
Tax under Article(s) 22 of the Tax Law for the :
Year 1980.

State of New York :

ss.:

County of Albany :

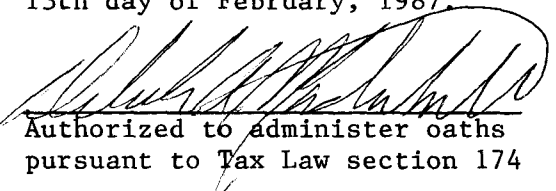
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of February, 1987, he/she served the within notice of Decision by certified mail upon Joseph S. & Linda D. Puglisi the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

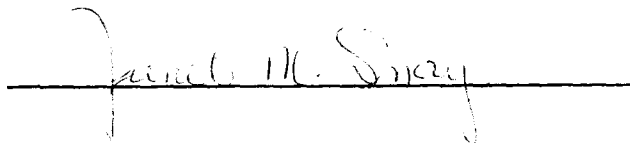
Joseph S. & Linda D. Puglisi
P. O. Box 335, Forest Lane
Crompond, NY 10517

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
13th day of February, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174


Janet M. Snay

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

February 13, 1987

Joseph S. & Linda D. Puglisi
P. O. Box 335, Forest Lane
Crompond, NY 10517

Dear Mr. & Mrs. Puglisi:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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.	:	

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 LAW

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 \$447.50.¹

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


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 pursuant to Tax Law §253.1-a(a).

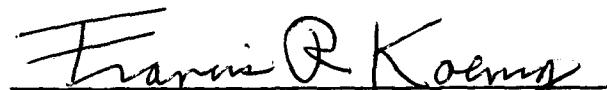
E. That the petition of Joseph S. Puglisi and Linda D. Puglisi is denied and the Notice of Deficiency dated April 5, 1984 is sustained, together with such additional interest as may be lawfully due and owing.

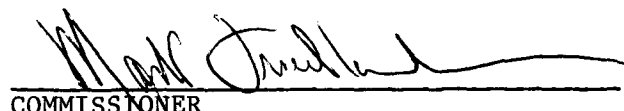
DATED: Albany, New York

STATE TAX COMMISSION

FEB 13 1987


PRESIDENT


COMMISSIONER


COMMISSIONER