STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
CARLOS LI	:	DECISION DTA NO. 826508
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 2010.	:	

Petitioner, Carlos Li, filed an exception to the determination of the Administrative Law Judge issued on June 9, 2016. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Alejandro Taylor, Esq., of counsel).

Petitioner filed a brief in support of his exception. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument was heard on November 10, 2016 in Albany, New York, which date began the six-month period for the issuance of this decision.

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

ISSUE

Whether petitioner met his burden of proving entitlement to the solar energy equipment system tax credit pursuant to Tax Law § 606 (g-1) for tax year 2010.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, which appear below.

1. Petitioner, Carlos Li, filed an amended New York State personal income tax return for the year 2010 on April 2, 2012. Petitioner claimed a tax credit for qualified solar energy system equipment expenditures in the amount of $5,000.00 on the 2010 amended return.

2. The Division of Taxation (Division) selected petitioner's 2010 amended return for review and by letter dated March 21, 2013, requested that petitioner provide additional information to substantiate the solar energy system equipment expenditures reported on his amended return.

3. In response, petitioner submitted to the Division a copy of a receipt from Buffalo Thermal Heating, dated June 27, 2010, in the amount of $37,360.00 for a ground source heat pump system (system). The invoice indicates that the system includes the following: hydron thermostat, electric emergency backup heater, full load/part load operation, central air conditioning, electronically commutated motor furnace fan, environmentally friendly R-410A zero ozone depletion refrigerant, electric heat pump domestic hot water heater with built-in pump and CuNi coil. The total price of $37,360.00 is not itemized among the component parts of the system.

4. Based on petitioner's response to the information request, the Division issued a statement of proposed audit changes, dated February 10, 2014, disallowing petitioner's claim for the solar energy system equipment credit. The Division recomputed petitioner's 2010 return and determined additional tax due in the amount of $5,000.00.

5. The Division issued a notice of deficiency to petitioner, dated April 2, 2014, asserting tax due in the amount of $5,000.00 plus interest in the amount of $1,244.76.

6. During the hearing in this matter, petitioner presented the testimony of Jens Ponikau, a certified geothermal designer and physician, who described the system installed at petitioner's home in 2010. The system uses heat pumps to transfer heat from the ground into the house in order to heat the house and the home's water. To install the system, the installer dug trenches approximately six feet deep to put pipes in the ground. The ground acts as a medium, storing heat absorbed from solar radiation. A water-antifreeze mixture is circulated through the pipes in order to extract the heat from the ground. The water-antifreeze mixture is sent through the ground loop exchanger (or heat exchanger) into the ground at approximately 30 degrees, where the temperature increases by 5 degrees. The mixture is then circulated back into the house and the 5 degree increase is extracted by the heat pump and the heat is concentrated through a method of compression. The pump, which circulates the water-antifreeze mixture through the pipes, the heat pump and the compressor require electricity to function.

Dr. Ponikau further testified that in the summer, the system works in reverse and takes heat from the house and pumps it back into the ground to store for winter. In cooling mode, the ground source heat pump does not derive energy from solar radiation.

7. The system installed at petitioner's house includes an electric energy backup heater. The price for the electric energy backup heater was not separately itemized and was included in the total cost for the system.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge framed the issue of whether petitioner's system qualified for the tax credit at issue as a question of whether petitioner's interpretation of Tax Law § 606 (g-1) is the only reasonable interpretation. The Administrative Law Judge concluded that it was not.

Specifically, the Administrative Law Judge found that petitioner's system is dependent upon a non-solar energy system because an electric pump is a necessary part of its proper functioning. The Administrative Law Judge determined that the statutory definition of solar energy system equipment excludes any equipment that is part of a non-solar energy system. The Administrative Law Judge also determined that the system's cooling mode does not use solar radiation to produce energy because the cooling mode removes solar heat from the residence and transfers it into the ground. Additionally, the Administrative Law Judge found that petitioner's system includes the non-itemized cost of an electric backup heater. According to the Administrative Law Judge, petitioner did not establish the cost of the system without the electric backup heater and his claim is properly denied on this basis.

The Administrative Law Judge found that the reasonableness of the Division's position is supported by a recent proposed, but vetoed, amendment to the Tax Law to add a credit for geothermal energy system equipment. The Administrative Law Judge concluded that this proposed change showed that the Legislature did not intend to include geothermal energy systems in Tax Law § 606 (g-1) as in effect during the year at issue.

ARGUMENTS ON EXCEPTION

Petitioner contends that the system's need for grid-dependent electricity to run pumps that circulate the fluid that harvests geothermal energy to generate heat should not disqualify it from the credit at issue. Petitioner notes that the electricity needed to run the pump was not part of any other system, but functions solely to enable the system to generate geothermal heating. Petitioner asserts that other systems, such as a natural gas furnace or a solar water heating system, require

electricity to operate, but both are understood to be natural gas or solar radiation systems, respectively.

Petitioner also argues that the system's auxiliary electric backup heater should not disqualify it from the credit. Petitioner asserts that similar auxiliary backups are common on alternate or renewable energy systems. Petitioner also contends that he never connected the backup unit in his system and thus his residence is and has been totally dependent on geothermal heat.

Petitioner further contends that the system should not be disqualified from the credit by the fact that it cools the house in the summer by transferring solar radiation from the house to the ground. Petitioner notes that the energy so transferred is to be used in the winter. Petitioner notes also that this summer use of the system provides the additional benefit of solar-heated water.

Petitioner disagrees with the Administrative Law Judge's conclusion that the vetoed bill to provide credit for geothermal heating systems supports the inference that the credit statute at issue does not include geothermal systems within its purview. In support of this argument, petitioner submitted, for the first time on exception, a letter dated January 4, 2016, addressed "To whom it may concern," and written by New York State Assemblymember Sean M. Ryan. Assesmblymember Ryan's letter states that he drafted the bill and describes his rationale for the bill.

Petitioner contests the Administrative Law Judge's finding that he failed to meet his burden of proof to establish the cost of the system without the electric backup heater. He contends that the cost of the auxiliary heater was small relative to the total cost of the system. To substantiate

this contention, petitioner submitted, for the first time on exception, a manufacturer's price list that provides, among other items, a recommended price for auxiliary electric heaters.

The Division asserts that the Administrative Law Judge properly stated that petitioner's burden in this matter is to establish that its interpretation of the relevant statute is the only reasonable one.

The Division argues that the statutory definition of solar energy equipment should be construed as a whole and that the proper interpretation of that definition supports its position that an energy system that is connected to non-solar energy equipment does not qualify as solar energy system equipment.

The Division also argues that petitioner's system fails to satisfy the statutory definition and thus fails to qualify for the credit at issue because the system does not produce energy designed to provide cooling to petitioner's residence during the summer.

Additionally, the Division concurs in the Administrative Law Judge's conclusion that petitioner failed to prove the cost of the system without its non-solar energy components. Even if petitioner had shown the itemized cost of the system, the Division contends that the statute does not permit the cost of non-solar components of an energy system to be severed from the solar components in order to qualify for the credit.

The Division also agrees with the Administrative Law Judge's conclusion that the vetoed bill to provide for a geothermal energy system credit supports the conclusion that the statute at issue does not provide a credit for such systems.

Finally, the Division argues that the documents offered by petitioner with his exception should be excluded from the record because such documents were submitted after the Administrative Law Judge closed the record.

OPINION

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, solar energy system equipment is defined, 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 Law § 606 [g-1] [3]).

Tax credit statutes, like 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 [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]).

Petitioner has the burden to establish "unambiguous entitlement" to the claimed statutory benefit (***Matter of United Parcel Serv., Inc. v Tax Appeals Trib. of State of N.Y.***, 98 AD3d 796, 798 [2012], ***lv denied*** 20 NY3d 860 [2013]). Indeed, petitioner must prove that his 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 [2016]).

Guided by these principles, we find that petitioner has not met his burden. As noted, equipment that qualifies for the credit must use solar radiation to produce energy to provide heating, cooling, hot water or electricity. We think that a reasonable construction of the statute limits credit-qualifying equipment to technologies that use solar radiation directly to produce energy. Petitioner's system uses ground source heat to produce energy and thus does not make direct use of solar radiation. We are aware that heat is in the ground because the Earth absorbs solar radiation and that, thus, a broader reading of the statute might include petitioner's system. As noted, however, we are compelled to interpret the statute narrowly.

We find nothing in the legislative history of Tax Law § 606 (g-1) contrary to our statutory interpretation or supportive of petitioner's contention that the subject credit was intended to apply to geothermal technologies (***see*** Legislative Bill Jacket L 1997, c 399, Legislative Bill Jacket L 2005, c 378).

As noted previously, a recent proposed amendment to Tax Law § 606 would have added a new credit for geothermal energy systems (***see*** 2015 NY Senate-Assembly Bill S2905, A2177-A). Although ultimately vetoed, the proposed amendment does give rise to a presumption that it was intended to make a material change in the existing law (***Matter of Stein***, 131 AD2d 68, 72

[1987], ***appeal dismissed*** 72 NY2d 840 [1988]; ***see also*** McKinney's Cons Laws of NY, Book 1, Statutes §§ 191, 193). Indeed, the Governor's veto message makes clear that the bill would have provided a new credit (***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"]). The failed amendment thus supports our construction of the solar energy system equipment credit as in effect in 2010.

As we have concluded that petitioner's ground source heat pump system is not solar energy system equipment as defined in Tax Law § 606 (g-1) (3), it is not necessary for us to address the Administrative Law Judge's conclusions that petitioner's system fails to qualify for the credit because it has an electric pump and because it has an electric emergency backup heater. We thus do not address the broader question of whether the presence of any non-solar powered components in an otherwise qualified solar energy system necessarily disqualifies such system from the credit.

It is also unnecessary for us to address the Administrative Law Judge's conclusion that petitioner failed to establish the cost of the electric backup heater and the significance of the Administrative Law Judge's conclusion that the system's cooling mode does not use solar radiation.

Finally, we note that petitioner submitted additional evidence with his exception. This Tribunal has a longstanding policy against considering evidence submitted after the close of the evidentiary record (***see e.g. Matter of Schoonover***, Tax Appeals Tribunal, August 15, 1991). This is because accepting evidence after the record is closed is inconsistent with a fair and

efficient hearing process, and also deprives the opposing party of an opportunity to question the evidence on the record (***see e.g. Matter of Ippolito***, Tax Appeals Tribunal, August 23, 2012, ***affd sub nom Matter of Ippolito v Commissioner of N.Y. State Dept. of Taxation & Fin.***, 116 AD3d 1176 [2014]). We therefore decline to accept petitioner's additional evidence into the record and, for that reason, we have not considered such evidence in rendering this decision.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Carlos Li is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Carlos Li is denied; and
4. The notice of deficiency dated April 2, 2014 is sustained.

DATED: Albany, New York
May 8, 2017

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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