STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
KATHLEEN GRIMM	:	DECISION DTA NO. 826743
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, Kathleen Grimm, filed an exception to the determination of the Administrative Law Judge issued on December 22, 2016. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Ellen Roach, Esq., of counsel).

Petitioner filed a brief in support of her exception. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Petitioner's request for oral argument was denied. The six-month period for the issuance of this decision began on August 4, 2017, the date petitioner's reply brief was received.

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

ISSUE

Whether petitioner met her 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 except that we have modified findings of fact 5, 6 and 8 for clarity. As so modified, such facts appear below.

1. Petitioner, Kathleen Grimm, filed a New York State personal income tax return for the year 2010, on May 11, 2011, on which she claimed a tax credit for qualified solar energy system equipment expenditures in the amount of $1,875.00.

2. The Division of Taxation (Division) selected petitioner's 2010 return for review and by correspondence dated April 16, 2013, requested that petitioner provide additional information to substantiate the solar energy system equipment expenditures reported on her return.

3. In response, petitioner returned the April 16, 2013 correspondence to the Division with information requested as to the address where the solar energy system was installed; whether the same address was petitioner's principal residence during 2010; and whether any of the equipment was purchased with nontaxable federal, state or local grants or rebates. Petitioner identified the installation address as one on Smith Road, East Amherst, New York; circled "no" in response to the question as to whether that address was her principal residence during 2010; and answered "no" to the use of any grant or rebate money to make the purchase. In explanation of her response regarding the principal residence status, petitioner stated that the home was a new construction project being built during 2010, and that she moved in during December 2010, but due to a heating malfunction with the ground source heat pump system, she was forced to seek other shelter temporarily until the problem was resolved. These facts and the fact that she did not reside at the Smith Road address for the entire year confused petitioner as to the correct answer to the principal residence question.

4. Petitioner submitted into the record a receipt from Geotechniques, LLC, dated December 28, 2010, for the "Installation of Geothermal Wells" in the amount of $28,843.90,

marked as having been paid on "12/28," in a notation at the bottom of the document. The total price of $28,843.90 is not itemized among the component parts of the system.

5. Following the hearing, and with the Administrative Law Judge's permission, petitioner submitted the invoice for the work that she claimed was the basis for the solar energy credit in issue. The invoice, from Keepsake Homes, Inc., was dated December 28, 2010, referenced petitioner's East Amherst, New York address, and described the services rendered, as follows: "Designed and installed electrical wiring for heat distribution for 8-ton ground source geothermal heat pump system," and listed an invoice amount of $7,500.00. The invoice was marked as having been paid on December 28, 2010, in a handwritten notation at the bottom.

6. On February 10, 2014, the Division issued a statement of proposed audit changes to petitioner advising her of the disallowance of her claim for the solar energy system equipment credit and, consequently, her liability of $1,875.00 in additional tax due, plus interest, for the 2010 tax year.

7. The Division issued a notice of deficiency to petitioner, dated April 29, 2014, asserting tax due in the amount of $1,875.00 plus interest, for a total of $2,354.82.

8. A conciliation conference before the Bureau of Conciliation and Mediation Services was held on August 13, 2014, and the statutory notice was sustained by a conciliation order (CMS No. 261942) dated October 17, 2014. A petition challenging the statutory notice was filed with the Division of Tax Appeals on January 15, 2015.

9. During the hearing in this matter, petitioner presented the testimony of Dr. Jens Ponikau, a certified geothermal designer and physician, who described the system installed at petitioner's

home in 2010. Although he did not perform the installation, he reviewed it in great detail due to some post-installation problems encountered by petitioner.

Dr. Ponikau explained that the solar heat that is stored in the ground outside the home is transferred into the home by a heat pump that operates by compressor technology and is an integral component of the whole system. The creation of the system in this case began with the drilling of shallow wells and installation of a series of pipes in the ground, outside the home, totaling approximately 2,000 to 3,000 feet of pipes, leading to the wells. The ground acts as a medium, storing heat absorbed from solar radiation. A pumping system exists inside the home and its function is to pump a water mixture through the system, in order to extract the heat from the ground. A heat pump, also located inside the home, takes the heat and distributes it as energy or heat inside the building. The pump, which circulates the water mixture through the pipes, the heat pump and the compressor require electricity to function. Without the electricity, the system could not function.

10. The Division introduced into evidence post-hearing the legislative sponsor's memorandum in support of the 2005 amendment of the solar credit in issue (L 2005, ch 378), which noted its 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 exclusion from the credit qualification of non-solar components. The memorandum concludes with the following:

> "Broadening the scope of the credit to include less expensive systems such as solar hot water heaters, along with increasing its maximum amount, will provide a powerful incentive for homeowners to utilize this technology which will contribute greatly to a reduction in the state's energy usage and will have positive effects on the environment."

11. In 2015, the New York State Legislature failed in an attempt to amend Tax Law § 606, to add a new geothermal energy system credit (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).

12. Petitioner introduced into evidence a letter dated January 4, 2016 from Assembly member Sean Ryan, sponsor of Assembly Bill A2177-A, which clarified his position in pertinent part, as follows:

> "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.
>
> I am a big supporter of green technology. Increased usage of non-fossil fuel energy provides both numerous and substantial benefits. Ground source heat pumps have the potential to greatly reduce the cost of energy for the consumer and the reliance on traditional energy sources. This potential is why I believe a geothermal tax credit serves the best interest of New York State.

> 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 determined that petitioner failed to meet her burden to show that her interpretation of the solar energy system credit statute is the only reasonable interpretation, as required to establish entitlement to such credit. The Administrative Law Judge noted that, pursuant to the statutory language, qualifying equipment "shall not include equipment connected to solar energy system equipment that is a component of part or parts of a non-solar energy system" (Tax Law § 606 [g-1] [3]). Petitioner's geothermal system's pumps and compressor require conventional electricity to function (***see*** finding of fact 9).[1] The Administrative Law Judge found that petitioner's proposed construction of this provision, i.e., that the statute does not expressly require a solar energy system to operate on solar energy exclusively, and, if it does, then only the specific, grid-connected components should be disqualified, was reasonable. She also found, however, that the Division's interpretation of the statute, i.e., that the existence of any grid-connected components disqualifies the entire system, was reasonable as well. Hence, the Administrative Law Judge concluded that petitioner's interpretation was not the only reasonable one. The Administrative Law Judge also analyzed the failed legislative effort to create a specific tax credit for geothermal energy system equipment and

[1] The implication here is that, by their need for an external power source, the pumps and compressor are components of part or parts of a non-solar energy system.

found that such proposed change to the Tax Law indicates that the solar energy system credit as enacted does not include geothermal systems. Given these two findings, the Administrative Law Judge concluded that the solar energy credit was properly denied.

The Administrative Law Judge also found that petitioner proved that the geothermal system at issue was installed at her principal residence, as required under the credit statute. This finding is not relevant to this decision, however, as the Division did not take an exception.

SUMMARY OF ARGUMENTS ON EXCEPTION

Petitioner asserts that the Administrative Law Judge misinterpreted the solar energy system credit statute. Petitioner contends that the purported disqualifying equipment is integral to the system and, accordingly, is not part of a non-solar system, even though it is connected to the electrical grid. Petitioner asserts that since her geothermal system requires solar radiation to operate, it fulfills the only statutory requirement for the credit; that is, it utilizes solar radiation to provide heating. According to petitioner, her system thus satisfies the plain language of the statute and is the only reasonable interpretation.

Petitioner also contends that other alternate energy systems, such as solar photovoltaic and solar thermal systems, have components that are connected to an external power source. Petitioner asserts that it would be impossible for these other systems to qualify for the credit under the Administrative Law Judge's interpretation. Petitioner further asserts that the Division has previously considered these other systems to be eligible for the solar credit.

Petitioner contends that there is no conceptual difference between a solar collector mounted on a roof and a solar collector buried in the ground and thus no basis for distinguishing between solar thermal and geothermal systems. Petitioner asserts that both systems use mediums to

collect solar energy, with geothermal systems using soil in addition to the pipes and fluids employed in both.

Petitioner also contends that the letter of Assemblymember Ryan (***see*** finding of fact 12) expresses the legislative intent underlying the geothermal energy system credit bill. Petitioner asserts that such intent was to solidify a tax credit for geothermal systems, not to create a credit that did not previously exist.

Finally, petitioner contends, alternatively, that if some components of her geothermal system are considered to be part of a non-solar system, then only the cost of such components should be disqualified in computing the amount of available credit.

The Division relies on this Tribunal's decision in ***Matter of Li*** (Tax Appeals Tribunal, May 8, 2017), in which we denied a claim for solar energy system equipment credit for a geothermal system similar to petitioner's.[2] Additionally, the Division concurs with the Administrative Law Judge's finding that the failed amendment to Tax Law § 606 that would have created a geothermal energy system credit supports its argument that Tax Law § 606 (g-1) as enacted does not include such systems. The Division also asserts that, even if petitioner's system is considered to be a solar energy system, its reliance on components that require external electricity disqualifies the entire system from the credit. Finally, although not discussed in the determination, the Division argues that petitioner's equipment does not produce energy when in cooling mode, as required under the statute, but rather disposes of it.

In reply, petitioner contends that our decision in ***Matter of Li*** adds a limitation to the credit not found in the statute, namely, that solar equipment must make direct use of solar radiation to

[2] Our decision in ***Matter of Li*** was issued after the Administrative Law Judge's determination in this matter and, accordingly, was not addressed therein.

qualify for the credit. Petitioner asserts that all solar thermal systems require a medium to collect solar radiation and that soil is simply another medium.

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, 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)

Petitioner has 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, petitioner must prove that her 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]).

Guided by these principles, we find that petitioner has not met her burden. As we previously found in ***Matter of Li***, a strict and narrow construction of the solar energy system equipment credit statute reasonably excludes geothermal systems from its benefits. This is because, 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. Despite petitioner's contention to the contrary here, we find insufficient evidence in the record to dissuade us from that conclusion.

While we recognize that geothermal systems rely on solar energy that has been absorbed by the Earth, we find no indication in the legislative history of Tax Law § 606 (g-1) that the Legislature intended to include such systems within the definition of solar energy system equipment for purposes of the credit. When the credit was first enacted, it applied only to solar electric generating systems (***see*** L 1997, c 399). In 2005, it was expanded to include systems that provide solar heating, cooling and hot water (***see*** L 2005, c 378). The memorandum in support of the Senate's 2005 bill indicates an intent to broaden the credit "to include less expensive systems, such as solar hot water heaters" (Memorandum in Support, NY Senate Bill S5252). We

find nothing in the legislative history of Tax Law § 606 (g-1), as amended, suggesting that the Legislature intended to include geothermal systems in the credit.

The failed 2015 amendment to Tax Law § 606 also supports our conclusion that Tax Law § 606 (g-1) as enacted does not include geothermal systems within its purview. As noted, the proposed change would have added a new credit expressly for geothermal energy systems (***see*** finding of fact 11; ***see also*** 2015 NY Senate-Assembly Bill S2905, A2177A). Although vetoed, the proposed legislation does give rise to a presumption that the Legislature intended to make a material change in the existing 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 § 193). 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 S 2905 [emphasis added]). The Governor's veto message also indicates 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.

Assemblymember Ryan's January 4, 2016 letter provides little support to petitioner's proposed interpretation of Tax Law § 606 (g-1). A statement regarding legislative intent, made by a sponsor of a bill, such as the Assemblymember, 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."]). The letter is thus insufficient to overcome the previously cited presumption that, by proposing an amendment to a statute, the Legislature intended to make a material change in the law.

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 conclusion that petitioner's system fails to qualify for the credit because its pumps and compressor require conventional electricity to function. On this point, we note that there is insufficient evidence in the record to establish petitioner's contention that solar energy systems typically contain components that are connected to an external power source. Hence, petitioner's legal argument that the Administrative Law Judge's conclusion makes it impossible for a typical solar energy system to qualify for the credit has no factual support in the record. It is also unnecessary for us to address the Division's argument that the cooling function of petitioner's geothermal system is inconsistent with the statutory requirement that a qualifying system must produce energy.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Kathleen Grimm is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Kathleen Grimm is denied; and
4. The notice of deficiency dated April 29, 2014 is sustained.

DATED: Albany, New York
January 11, 2018

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

/s/ Anthony Giardina
Anthony Giardina
Commissioner