STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CARLOS LI	:	DETERMINATION 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 a petition 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.

A hearing was held before Barbara J. Russo, Administrative Law Judge, in Rochester, New York, on September 16, 2015 at 10:30 A.M., with all briefs to be submitted by January 6, 2016, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Alejandro Taylor, Esq., of counsel).

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

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.

CONCLUSIONS OF LAW

A. Tax Law § 606 (g-1) provides for a tax credit of 25 percent 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. "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]).

Petitioner argues that the system installed in his home in 2010 qualifies for the tax credit. The Division argues that the system does not meet the definition of "solar energy system equipment" as defined by Tax Law § 606 (g-1) (3) and therefore petitioner is not entitled to the tax credit.

B. "A tax credit is 'a particularized species of exemption from taxation'" (***Matter of Golub Serv. Sta. v. Tax Appeals Trib.***, 181 AD2d 216, 219 [3d Dept 1992] ***citing Matter of Grace v. State Tax Commn.***, 37 NY2d 193, 197 [1975]) and a taxpayer carries "the burden of showing 'a clearcut entitlement' to the statutory benefit" (***Matter of Golub Serv. Sta. v. Tax Appeals Trib.***, at 219 [citation omitted]). A taxpayer is required to prove that "its interpretation of the statute is the only reasonable interpretation" (***Matter of Brooklyn Navy Yard Cogeneration Partners***, Tax Appeals Tribunal, May 9, 2006, ***confirmed*** 46 AD2d 1247 [3d Dept 2007], ***lv denied*** 10 NY3d 706 [2008]).

The rules of statutory construction require that a "statute or legislative act is to be construed as a whole, and all parts of an act are to be read and construed together to determine the legislative intent" (McKinney's Cons Laws of NY, Book 1, Statutes § 97). Where the language of a statute is unambiguous, the statute should be construed so as to give effect to the plain meaning of the words used (***New York State Assn. of Counties v. Axelrod***, 213 AD2d 18, 24 [3d Dept 1995]).

Petitioner has failed to demonstrate that his interpretation of the statute is the only reasonable interpretation. A review of Tax Law § 606 (g-1) (3) reveals that the language is

unambiguous and specifically excludes from the definition of "solar energy system equipment" any equipment "that is a component of part or parts of a non-solar energy system . . . ." As the Division correctly points out, the system installed at petitioner's home is dependent on a non-solar energy system, in the form of a pump powered by electricity, in order to function. Additionally, as explained by petitioner's witness, in cooling mode during the summer, the system does not use solar radiation to produce energy. Rather, cooling is achieved by the absence of solar radiation, whereby the system removes solar heat from the home and transfers it into the ground.

Moreover, the total price for petitioner's system includes costs for an electric energy backup heater. The electric energy backup heater is specifically excluded from the definition of "solar energy system equipment." The invoice for petitioner's system does not separately itemize costs and the cost of the electric backup heater in relation to the total cost of the system is not identified. As such, even if the other components qualified for the tax credit, petitioner has failed to meet his burden of proof to establish the cost of the system without the electric backup heater.

C. The Division further contends that its argument is supported by a recent proposed, but failed, amendment to Tax Law § 606, which attempted 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 a ground source heat pump system" (***id***.). The proposed legislation 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). Petitioner argues that proposed legislation from 2015 is irrelevant with regard to his tax filing of 2010. However, contrary to petitioner's argument, it is a fundamental rule of statutory construction that "[w]hen the Legislature amends a statute, it is presumed that the amendment was made to effect some purpose and make some change in the existing law" and that "[b]y enacting an amendment of a statute and changing the language thereof, the Legislature is deemed to have intended a material change in the law" (***Matter of Stein***, 131 AD2d 68, 72 [1987], ***citing*** McKinney's Cons Laws of NY, Book 1, Statutes §§ 191, 193, ***appeal dismissed*** 72 NY2d 840 [1988]). "Moreover, a statute will not be held to be a mere reenactment of a prior statute if any other reasonable interpretation is attainable" (***id.***). While it is noted that the proposed legislation was vetoed, and the proposed amendment was not enacted, the proposed change to the law is nevertheless an indication that Tax Law § 606 (g-1), as enacted, does not contain a credit for ground source heat pump systems. Additionally, it is noted that there is no indication that the proposed change to the statute was intended to explain ambiguities in the existing statute (***see*** McKinney's Cons Laws of NY, Book 1, Statutes § 193 [b]). Indeed, the 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" rather than to clarify that such credits already existed (Memorandum in Support, NY Senate Bill S 2905).[1]

[1] Petitioner also argues that the Division has raised new factual evidence and issues by discussing the 2015 proposed legislation. Contrary to petitioner's argument, the Division has not raised new factual evidence or issues; rather, it is presenting legal argument in support of the issue clearly raised by the Division during the audit and at hearing that the legislature did not intend to include ground source heat pump systems in Tax Law § 606 (g-1). Additionally, the proposed legislation and veto are matters of public record by the state legislature and official notice may properly be taken thereof (State Administrative Procedure Act § 306 [4]).

The 2015 proposed change to the statute evinces a lack of legislative intent to include ground source heat pump systems in the solar tax credit set forth in Tax Law § 606 (g-1). The existing solar credit statutory language lacks any indication of such an intent. Pursuant to the above-noted principles of statutory construction, it is reasonable to conclude that the Division's construction of Tax Law § 606 (g-1) is consistent with the legislative intent underlying the solar energy system credit, while petitioner's is not.

D. The petition of Carlos Li is denied.

DATED: Albany, New York
June 9, 2016

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE