STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **WAYNE K. MACKEY** 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 2018.	: : : : : :	DETERMINATION DTA NO. 850005

Petitioner, Wayne K. Mackey, 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 2018.

A formal hearing by videoconference was held on March 6, 2024, before Alejandro Taylor, Administrative Law Judge, with all briefs to be submitted by August 9, 2024, 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. (Christopher O'Brien, Esq., of counsel). This matter was reassigned to Osborne K. Jack, Administrative Law Judge, pursuant to the authority of the Rules of Practice and Procedure of the Tax Appeals Tribunal (20 NYCRR 3000.15 [f]).

After reviewing the entire record in this matter, Osborne K. Jack, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner met his burden of proving entitlement to the solar energy equipment system credit pursuant to Tax Law § 606 (g-1) for tax year 2018.

FINDINGS OF FACT

1. Petitioner, Wayne K. Mackey, filed a New York State resident income tax return, form IT-201, for tax year 2018 (return), with a joint filing status. Included with petitioner's return was a form IT-255, claim for solar energy system equipment credit, which indicated that petitioner placed solar energy equipment in service on February 19, 2018, had qualified expenditures of $23,128.00 and computed a credit of $5,000.00.

2. The Division of Taxation (Division) selected petitioner's return for review and, on June 7, 2021, issued a statement of proposed audit change (statement) to petitioner disallowing his claim for the solar energy system equipment credit. The statement noted that "the maximum solar energy system equipment credit per eligible system is $5,000.00." It advised petitioner that since he was allowed a solar energy system equipment credit of $5,000.00 on his 2017 return, "the solar energy system equipment credit claimed on [his] 2018 New York State income tax return in the amount of $5,000.00 has been disallowed." The Division recomputed petitioner's 2018 return and determined additional tax due in the amount of $5,000.00, plus interest.

3. In response to the statement, petitioner submitted copies of two separate purchase agreements for solar systems for 2017 and 2018, between petitioner and Kasselman Solar, LLC (KS). A work order was attached to each agreement. The 2017 agreement was executed on April 14, 2017, and the 2018 agreement was executed on February 19, 2018. The total system cost was $26,492.00 and $26,071.00, for 2017 and 2018, respectively. But for the dates and cost, the agreements and work orders are almost identical. The agreements show that petitioner installed two separate solar systems consisting of 29 "SolarWorld (made in USA) SW 290 Mono Black" solar panels in 2017 and 2018. The agreements further show that petitioner installed 29 "Enphase M250 Microinverter[s]" and 29 "Enphase IQ6 Microinverter[s]" in 2017 and 2018,

respectively. Each agreement reflected that petitioner purchased separate 8,410-watt, net-metered, grid-tied and roof mounted, solar electric systems. The agreements specified that KS will "(i) design, install, and connect the system in material compliance with all current applicable laws[,] codes or regulations; (ii) complete all required inspections; [and] (iii) obtain all required certifications and permits as may be required by Federal, State or local law." The agreements noted that "KS will interconnect the System with the utility and cause the system to generate energy measured in kilowatt hours."

4. On November 15, 2021, in response to the agreements provided by petitioner, the Division sent petitioner a response to taxpayer inquiry, stating that "the maximum solar energy system equipment credit per eligible system is $5,000.00," and advising petitioner that since he obtained a $5,000.00 credit in 2017, the credit claimed on his 2018 return was disallowed.

5. On December 8, 2021, the Division issued a notice of deficiency, bearing assessment number L-053529973 (notice), to petitioner asserting tax due in the amount of $5,000.00, plus interest.

6. On December 17, 2021, petitioner timely filed a petition with the Division of Tax Appeals protesting the notice. In the petition, petitioner asserted that he is entitled to the credit claimed on his 2018 return because he installed a separate, qualified solar energy system in 2018.

7. A hearing by videoconference was held on March 6, 2024.

8. At the hearing, the Division presented the testimony of Rachel Major, a Team Leader in the Division's Personal Income Tax Unit. On direct examination, the witness was asked to explain what the Division was looking for during the audit. She stated, "we basically added his 2017 credit and his 2018 credit and saw he was in excess of 5,000 at the same address, based on the available information that petitioner has lived at the Perkinsville Road address during this

time period." The witness was then asked whether she considered whether the 2018 system could be defined as a separate system and she explained that she "did look to see if the Petitioner's primary residence had changed, but based on the information in his previous returns and the information that he provided it appeared he's lived at the Perkinsville address the entire time." She added that she "also went to Image Mate for Ulster County." The Division's attorney persisted in trying to get the witness to discuss the agreements provided by petitioner. He asked, "I don't want to pull a switch on the purchase agreements. Do you -- you looked at the two purchase agreements [?]" The witness responded that she had reviewed both agreements and stated that "the addresses were the same," and that "[t]he exact equipment was purchased both years and at the same cost as per the Petitioner." When asked whether someone who purchased the exact equipment two years in a row would be entitled to the credit, the witness stated that "a qualifying solar energy system has to have a net metering agreement." She added that "you need to have a second net meter - - net metering agreement and you have to have a second net meter." She stated that petitioner did not provide any evidence of a net metering agreement for 2017 or 2018.

9. In addition, Ms. Major stated that petitioner failed to provide a building permit for the 2018 solar system. She also stated that petitioner did not provide an "as-built" document to show what the system looked like upon completion. Finally, she testified that she reviewed "Image Mate," an online data base that allegedly provides detailed information on properties, including records of solar energy improvements, and there was no record of a solar system being installed on petitioner's premises in 2018.

10. During cross examination the following exchange occurred between petitioner and Ms. Major:

> Q. You were talking about the net meter agreement, and the building permit, the electrical permit, did you guys ever ask me for that? Because I had to have all that to have each one done.
>
> A. I don't have any - - I don't have any record of us asking you for that.

11. At the hearing, petitioner testified that he installed two separate solar energy systems at his residence. He stated that he obtained a separate loan to pay for the installation of each system. He added, "I got a separate meter -- a separate subpanel now for my electric panel with just all the solar in it that has two systems there." He also stated that when he checks online to see how much solar energy his equipment is producing, both systems are visible. Petitioner provided a copy of his loan application with the New York State Energy Research and Development Authority (NYSERDA) to finance the purchase of the 2018 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 principal 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 … Solar energy system equipment that generates electricity for use in a residence must conform to applicable requirements set forth in section sixty-six-j of the public service law" (Tax Law § 606 [g-1] [3]).

In pertinent part, the Public Service Law defines "solar electric generating equipment" as follows:

> "a photovoltaic system . . . that is manufactured, installed, and operated in accordance with applicable government and industry standards, that is connected

> to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities, and that is operated in compliance with any standards and requirements established under this section" (Public Service Law § 66-j [1] [d]).

Public Service Law § 66-j (2) states that:

> "[a]n electric corporation shall provide for the interconnection of solar . . . electric generating equipment . . . owned or operated by a customer-generator and for net energy metering, provided that the customer-generator enters into a net energy metering contract with the corporation or complies with the corporation's net energy metering schedule and complies with standards and requirements established under this section."

As relevant here, a "customer-generator" means "a residential customer of an electric corporation, who owns or operates solar electric generating equipment located and used at his or her residence" (Public Service Law § 66-j [1] [a]). "Net energy metering" refers to the use of a net energy meter to determine the net amount of energy supplied by an electric corporation and provided to the corporation by a customer-generator, during a billing period (*see* Public Service Law § 66-j [1] [c]).

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], ***lv denied*** 338 NE2d 330 [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.,*** 181 AD2d at 219 [citation omitted]). 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 Grimm,*** Tax Appeals Tribunal, January 11, 2018; ***Matter of Li,*** Tax Appeals Tribunal, May 8, 2017; ***see also Matter of Piccolo v New York State Tax Appeals Trib.,*** 108 AD3d 107, 111-112 [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 (***see Matter of Grace v New York State Tax Commn.***, 37 NY2d at 196).

C. Under the plain meaning of the language of Tax Law § 606 (g-1) and Public Service Law § 66-j, petitioner has met his burden of proving that he is entitled to the solar energy equipment systems credit for tax year 2018. Petitioner submitted separate agreements with KS showing that, in 2017 and 2018, he engaged the services of KS to install separate solar energy systems equipment at his residence. The agreements make it clear that the solar systems were installed in compliance with all applicable Federal, State and local laws and regulations. Specifically, the agreements indicated that both the 2017 and 2018 systems were grid-tied and net-metered.

The record supports a finding that petitioner incurred qualified solar energy system equipment expenditures for qualified solar energy equipment placed in service at his principal residence in 2018. Petitioner repeatedly testified that he installed a separate solar system in 2018. He provided a copy of the agreement and work order with KS to install the 2018 system. Those documents described the solar system and indicated that the same was grid-tied and net-metered.

The Division insists that petitioner cannot qualify for the credit at issue because he did not provide a net metering agreement. The Division's position is rejected. The Division points to no statutory provision or law to support its position. The statute is clear that a customer-generator can either enter into a net energy metering contract with an electric corporation or comply with the corporation's net energy metering schedule and with the standards established by Public Service Law § 66-j. Here, the 2018 agreement clearly stated that petitioner's system

was grid-tied. Moreover, the 2018 agreement specifically stated that petitioner's system was net-metered.

Here, it appears that the Division determined from the outset of the audit that petitioner could not obtain a credit for 2018 because he had already claimed the maximum solar energy system equipment credit in 2017. The focus of the Division's audit then centered on whether petitioner had moved to a new address, not on whether petitioner had installed a second qualifying system at the same address. During her testimony, the Division's witness repeatedly insisted that petitioner could only qualify for the credit if he had moved to a new address. The Division points to no statute or law to support its position. In fact, Tax Law § 606 (g-1) shows no such limitation. That section allows a credit – as petitioner correctly points out – for each eligible solar energy equipment system.

It does not appear that the Division made any meaningful attempt to determine whether the system installed by petitioner in 2018 was a separate qualifying system. Upon receiving the statement from the Division, petitioner provided the Division with copies of the 2017 and 2018 agreements with KS and the accompanying work orders. Those documents fully described the systems, detailed the work that was completed and noted that the systems were grid-tied and net-metered. The Division responded with a response to taxpayer inquiry stating that since petitioner had obtained a credit of $5,000.00 in 2017, he was not eligible for any further credits. The response was conclusory and final and was followed by the notice at issue. The response did not request that petitioner provide a net metering agreement, building permits, electrical permits, or anything else that the Division now claims petitioner failed to provide.

In its brief in opposition to the petition, the Division stated "[n]othing under Tax Law § 606 (g-1) provides for a tax credit for merely building onto an existing system which has

previously been claimed for the solar credit." The Division does not explain why petitioner's installation of 29 solar panels and 29 microinverters was "merely building onto an existing system." After all, the Division acknowledged that "[t]he exact equipment was purchased both years and at the same cost as per the petitioner." The Division does not explain why one system qualifies for the credit, but the other is merely an addition to the old system.

D. The petition of Wayne K. Mackey is granted, and the notice of deficiency, dated December 8, 2021, is cancelled.

DATED: Albany, New York
February 6, 2025

/s/ Osborne K. Jack
ADMINISTRATIVE LAW JUDGE