

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-88 (1) I
Income Tax
February 25, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I880120A

On January 20, 1988, a Petition for Advisory Opinion was received from Stephen B. and Janice G. Ashley, 4348 Richmond Center Road, Livonia, New York 14487.

The issue raised is the availability, for purposes of the personal income tax under Article 22 of the Tax Law, of the special additional mortgage recording tax credit to an individual who is a shareholder of an S corporation for taxable years beginning after 1987.

Section 253.1-a(a) of the Tax Law requires the payment of a special additional mortgage recording tax under certain circumstances. A business corporation is allowed a credit, pursuant to section 210.17 of the Tax Law, against the tax imposed under Article 9-A of the Tax Law in an amount equal to the special additional mortgage recording tax paid. Prior to the enactment of Chapter 28 of the Laws of 1987, an individual was allowed a similar credit for personal income tax purposes pursuant to section 606(f) of the Tax Law. Moreover, section 606(i) of the Tax Law permitted the franchise tax credit allowed under section 210.17 to be passed through on a pro rata basis to the shareholders of an S corporation where the election under section 660(a) of the Tax Law was in effect for the taxable year.

Chapter 28 of the Laws of 1987 (the Tax Reform and Reduction Act of 1987) amended sections 606(f) and 606(i) to restrict the personal income tax credit to taxable years beginning before 1988. Section 606(i) was subsequently amended by section 57-1 of Chapter 817 of the Laws of 1987 (the Business Tax Reform and Rate Reduction Act of 1987) to eliminate this restriction. However, no similar amendment was undertaken with respect to section 606(f).

Section 57-1 of Chapter 817 of the Laws of 1987 provides, in part:

§ 57-1. Paragraphs one and two of subsection (i) of section six hundred six of such law, as amended by chapter twenty-eight of the laws of nineteen hundred eighty-seven, are amended to read as follows:

(1) In the case of a shareholder of an S corporation where the election provided for in subsection (a) of section six hundred sixty is in effect, there shall be allowed a credit against the tax imposed by this article after allowance of any other credit provided under this section and any credits permitted under sections six hundred twenty, six hundred twenty-one and six hundred [forty] thirty-five. The amount of the credit shall be his pro rata share of the credits [(A) for taxable years beginning before nineteen hundred eighty-eight;] under subdivisions twelve, twelve-B, seventeen, eighteen, nineteen and twenty; (B) for taxable years beginning in nineteen hundred eighty-eight, under subdivisions twelve, twelve-B and

eighteen,] of section two hundred ten of this chapter determined for the corporation for which such election is in effect, for the corporation's taxable year ending with or within the shareholder's taxable year. However, the credits allowed under such subdivisions twelve and twelve-B shall be computed at the rates applicable under subsections (a) and (i), respectively, of section six hundred six of this chapter. Such credit shall not, however, include any credit arising for a taxable year when such election was not in effect.

EXPLANATION - MATTER IN
ITALICS (underscored) is new; matter
in brackets [] is old law to be omitted.

Accordingly, pursuant to section 606(i) of the Tax Law as amended by Chapter 817 of the Laws of 1987, shareholders of electing S corporations will continue to be allowed to claim their pro rata share of the special additional mortgage recording tax credit determined under section 210.17 of the Tax Law for such electing S corporations for taxable years beginning after 1987.

DATED: February 25, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.