

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **SITE NO. RTN640**
(Appeal to UST Review Board)

ANNE M. SCHMIDT : **MARCH 25, 2003**

PROPOSED FINAL DECISION

I

SUMMARY

This matter concerns an appeal of a decision of the Underground Storage Tank Petroleum Clean-Up Account Review Board (Board) to reimburse Anne M. Schmidt (the applicant) for expenses associated with the remediation of a spill attributable to a residential underground heating oil storage tank system (UST). General Statutes §§22a-449a through 22a-449n. The applicant specifically challenges the Board's November 27, 2001 determination that she is responsible for payment of a \$10,000 deductible toward her remediation expenses based on her qualifying income.

The applicant and Department of Environmental Protection (DEP) staff responsible for the technical and fiscal review of these claims are the parties in this appeal. The applicant timely requested and was granted a hearing for reconsideration of the Board's decision. That hearing was held on December 31, 2002. General Statutes §22a-449n(e)(4). Documentary evidence was admitted to the record by agreement of the

parties along with stipulations to certain facts.¹ The record in this proceeding closed on January 15, 2003.

Upon review of the relevant facts and applicable law in this matter, I find that the applicant has complied with the statutory requirements for filing a claim for reimbursement under the residential UST program. The applicant's qualifying income is the total adjusted gross income shown on her 2000 joint income tax returns and the corresponding deductible of \$10,000 is the correct amount to be applied to her reimbursable expenses. I therefore recommend that the Board affirm its prior decision to apply the \$10,000 deductible to the applicant's claim.

II

DECISION

A

FINDING OF FACTS

1. The applicant resides at 12 Old Castle Drive in Newtown. She is the sole owner of a residential underground heating oil storage tank system (UST) that was removed from the premises on October 30, 2001. (Ex. APP-11; ex. DEP-8, ex. HO-1; test. A. Schmidt, 12/31/02.)

2. The applicant based her decision to remove her underground tank, in part, on the advice of a real estate professional that doing so would preserve the resale value of her home. The applicant also wanted to take advantage of the immunity afforded to

¹ I have admitted the stipulations into the evidentiary record as Ex. HO-1.

homeowners who removed their underground tanks. The applicant identified a registered contractor to remove her underground tank and received additional information about the program from the registered contractor including some, if not all, of the required application forms. (Test. A. Schmidt, 12/31/02.)

3. On August 21, 2001, the applicant submitted a completed Residential Underground Storage Tank Program Owner's Eligible for Payment Request Application (Form C) to the DEP. Form C provides certain information about the residential UST program including the following statement that "[t]he purpose of this application is to determine if monies are available, if the owner is eligible for reimbursement and the owner's deductible is correctly recorded." (Ex. APP-4.)

4. Section 5 of Form C pertains to the owner's verification of income. The form contains a table of qualifying income ranges in various increments and corresponding deductible amounts. An applicant is instructed to check the box that identifies "the correct range of the owner's adjusted gross income for the calendar year 2000." The instructions also state that the "deductible amount is based on the owner's adjusted gross income, as defined in the General Statutes, Section 12-701, for the calendar year immediately proceeding the year for which payment is sought. This means for the taxable year beginning on January 1, 2000, and ending on December 31, 2000." The applicant indicated on the table that her range of qualifying income for the calendar year 2000 was "up to \$50,000", which corresponds to a \$500 deductible. (Ex. APP-4; test. A. Schmidt, 12/31/02.)

5. In an August 21, 2001 letter, the DEP notified the applicant of the availability of funds from the residential UST clean-up fund and of her eligibility to participate in the residential UST program. The letter specifically provides that the “notification is not a guarantee of payment and shall only serve as an indicator of qualifying for payment as required by law, Public Act 01-9.” The letter also states that the DEP determined that the applicant’s deductible amount was \$500 based on the range of adjusted gross income she provided on Form C. (Ex. APP-5.)

6. On November 7, 2001, the applicant’s registered contractor submitted a Residential Underground Storage Tank System Program Registered Contractor’s Notification to DEP, Form D. The contractor estimated on this form that fifty to seventy-five tons of contaminated soil would be removed from the applicant’s premises at a cost of \$12,000 to \$15,000. The contractor also indicated that the owner of the residential UST was the applicant’s husband. (Ex. DEP-2.)

7. On November 14, 2001, the applicant submitted documents supporting her claim including Form E, Residential Underground Storage Tank Petroleum Clean-Up Review Board Program Owner’s Reimbursement Application. The applicant indicated that work had been completed during the period October 30, 2001 to November 6, 2001. The applicant included an invoice from the contractor to her husband in the amount of \$12,797.82. (Ex. APP-6; exs. DEP-3, 4.)

8. On November 19, 2001, the DEP submitted a request to the Department of Revenue Services to verify the applicant’s name, social security number and range of adjusted gross income for her and her husband. The Department of Revenue Services

confirmed the DEP's information and indicated that the couple's reported adjusted gross income for the calendar year 2000 was \$264,270.00. The applicant's 2000 federal joint income tax return shows an adjusted gross income of \$264,270. Her 2000 Connecticut joint income tax return shows an adjusted gross income of \$271,775. (Ex. DEP-6, 7, 11; test. J. Gilbert, 12/31/02.)

9. In a November 27, 2001 letter, the Board notified the applicant that of her \$12,797.82 costs claimed, she was entitled to a reimbursement of \$11,341.68 minus a deductible of \$10,000. The Board indicated in that letter that the Department of Revenue Services records showed that the applicant's adjusted gross income falls within the range of \$250,000 to \$500,000 and her deductible corresponds to that income range and is \$10,000 and not \$500.00. (Ex. APP-6; test. A. Schmidt, 12/31/02.)

10. On December 1, 2001, the applicant wrote to request that the Board reconsider the deductible applied to her claim. In her letter, the applicant states that she is the sole owner of the premises where the UST was located and that her adjusted gross income for the year 2000 was less than \$36,200, based on her annual salary of \$33,308 and one-half of the joint unearned income shown on her tax return. The applicant claims that her adjusted gross income is therefore well within the qualifying income range that corresponds to a \$500 deductible. (Ex. APP-7; test. A. Schmidt, 12/31/02.)

11. In a December 5, 2001 letter, the Board responded that Public Act 01-9 modified the residential UST claims process and evidenced the legislature's intent to incorporate an evaluation of an owner's ability to pay and a variable deductible scheme into the reimbursement determination. The letter also states that the "specific statutory

definition of qualifying income means the owner's adjusted gross income," and the "General Assembly chose a definition for qualifying income which uses the adjusted gross income of the husband and wife if they filed a joint return." The applicant submitted a second request for reconsideration on December 15, 2001 or, in the alternative, a hearing on her application. (Exs. APP-8, 9; test. A. Schmidt, 12/31/02.)

12. On December 19, 2001, the DEP issued an Acknowledgement of Receipt of Tank Owner Requesting Amnesty from any Civil Liability Pursuant to Public Act 99-269 as Amended by Public Act 00-201. This acknowledgement identified the applicant, the site's DEP identification number, and the date the applicant's underground tank was removed. (Ex. APP-11.)

13. In a June 11, 2002 opinion letter, the Board's counsel discussed the meaning of the terms "owner" and "adjusted gross income" as they are used in the statutes governing the residential UST program. Counsel advised the Board to consider the "owner" of a residential UST system to be the person or persons holding title to the real estate where the UST system is located. Counsel also opined that when a husband and wife file joint income tax returns "they have an adjusted gross income that applies to both of them for all purposes, just as if they were an individual." Counsel concluded that the residential UST program statutes require that the deductible be calculated according to an applicant's adjusted gross income and not the income of the owner. (Ex. DEP-9.)

14. On November 22, 2002, I issued a ruling in this matter on the threshold question of the proper construction of the term "adjusted gross income". Prior to my ruling, the applicant argued that the term should be interpreted to include only her income

for the relevant tax year because she is the sole owner of the premises where the UST was located. I concluded that, in the case of a joint return, an owner's adjusted gross income is the combined adjusted gross income of both taxpayers.² (Test. A. Schmidt, 12/31/02.)

B

CONCLUSIONS OF LAW

General Statutes §§22a-449a through 22a-449m and Public Acts 2001, No. 01-9, §§36 through 40 (now codified at §22a-449n) set forth the requirements for filing a claim for reimbursement for remediation of a spill attributable to a residential UST. The program incorporates deductibles ranging from \$500 to \$10,000 that correspond to a sliding scale of the homeowners qualifying income. If an applicant's income falls within a specified range, the prescribed corresponding deductible is applied to any payment awarded by the Board. General Statutes §22a-449n(d).

It is uncontroverted that the applicant has complied with the statutory requirements for filing a claim for reimbursement of the residential UST clean-up account. The applicant is the owner of the UST system despite evidence that her husband was involved in certain aspects of the remediation activities.³ The applicant filed Form C prior to entering into an agreement with a DEP registered contractor and provided the appropriate notice of the removal of her UST. The remediation work was completed

² This ruling is contained in the case docket file and is a part of the record of this proceeding.

³ Prior to the hearing, the parties reviewed the June 11, 2002 opinion letter from the Board's counsel. The parties agreed that the term "owner" means the property title holder. The evidence shows that Anne Schmidt alone holds title to the property where the UST system is located.

within the statutory time frame, and her application was timely filed. §§22a-449n(a) through (e). The sole controversy in this matter is whether the Board correctly calculated the deductible that was applied to the applicant's claim.

The applicant contests the range of qualifying income that the Board used to determine the deductible to be applied to her claim. The applicant claims that she correctly verified her qualifying income range on Form C as between \$0 and \$50,000 with a corresponding deductible of \$500. Staff argues that the correct range of qualifying income is \$250,001 to \$500,000, which encompasses the combined income of the applicant and her husband as reported by the Department of Revenue Services and shown on her 2000 joint income tax returns. At that income level, the deductible to be applied to the applicant's claim is \$10,000. §22a-449n(d). Resolution of this issue therefore turns on the appropriate construction of the term "qualifying income".

"Qualifying income" is defined as "the owner's adjusted gross income, as defined in section 12-701, for the calendar year immediately preceding the year in which costs eligible for payment were incurred under this section...." §22a-449n(a). As I stated in my November 22, 2002 ruling, according to well-established rules of statutory construction, the legislature's intent and the goals and purposes of the residential program require a determination that a joint taxpayer's adjusted gross income is the combined adjusted gross income of both taxpayers.

The Board's determination of the deductible to be applied to the applicant's claim supports this conclusion. The applicant argues that the Board's determination is based on her filing status rather than on her adjusted gross income. On the contrary, the Board

correctly determined the applicant's deductible on the basis of her ability to pay by reviewing her qualifying income. The applicant's qualifying income is the total adjusted gross income as shown on her 2000 joint income tax returns. The corresponding deductible to be applied to the applicant's claim is \$10,000. §22a-449n(d).

The applicant argues that she was denied the opportunity to make a fully informed decision to remove the UST and remediate the site because the Board's determination of the \$10,000 deductible came after the remediation was complete. However, the record shows that the applicant considered a number of factors in her decision to remove her UST. The record also shows that the initial determination of the deductible to be applied to the applicant's claim was based on the information she provided on Form C. That information reflects the applicant's apparent misunderstanding of the term "qualifying income" as it is defined by the term "adjusted gross income".

"It is a familiar legal maxim that everyone is presumed to know the law and ignorance of it excuses no one. This rule is founded on public policy and is based on the principle that the acts of a person must be considered as having been done with knowledge of the law, for otherwise the law could be evaded with facility." *Hebb v. Zoning Board of Appeals of the Town of West Haven*, 150 Conn. 539, 542 (1963); citing *Atlas Realty Corporation v. House*, 123 Conn. 94, 101, (1937). Ignorance of the law or mistake as to its meaning does not preclude the application of this rule to the applicant's case. If the applicant had correctly verified her qualifying income on Form C, she would have been fully aware of the deductible amount that would be applied to her reimbursement award. This result is compelled by the statute and the intent of the

legislature. Any other result would only serve to controvert the goals and objectives of the residential UST program, which include ensuring that funds are equitably distributed and available to as many homeowners as possible by basing reimbursement awards, in part, on a homeowner's ability to pay.

III

CONCLUSION

The applicant has complied with the statutory deadlines and requirements for filing a claim for reimbursement of her reasonable remediation expenses from the residential UST clean-up account. The Board properly based its assessment of the applicant's ability to pay a portion of the costs to remediate the site on her qualifying income range of \$250,001 to \$500,000. The correct deductible to be applied to the applicant's claim is therefore \$10,000.

IV

RECOMMENDATION

I recommend that the Board affirm its initial findings that the applicant is entitled to an award of \$11,341.68 as reimbursement for her costs and that said reimbursement is subject to a deductible of \$10,000.

March 25, 2003
Date

/s/ Jean Dellamarggio
Jean Dellamarggio, Hearing Officer

P A R T Y L I S T

In the matter of Appeal of Anne M. Schmidt to the UST Review Board
Site No. RTN640 (Newtown, CT)

PARTY

REPRESENTED BY

Anne M. Schmidt
12 Old Castle Drive
Newtown, CT 06470

Self

Department of Environmental Protection
Bureau of Waste Management
Underground Storage Tank Division
79 Elm Street
Hartford, CT 06106

Jacques Gilbert