

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
NEW PROCESS GEAR, INC. : DECISION
for Redetermination of a Deficiency or for Refund : DTA NO. 822899
of Corporation Franchise Tax under Article 9-A of :
the Tax Law for the Years 2005 and 2006. :

Petitioner, New Process Gear, Inc., filed an exception to the determination of the Administrative Law Judge issued on June 9, 2011. Petitioner appeared by Hiscock & Barclay, LLP (David G. Burch, Jr., Esq., and Kevin R. McAuliffe, Esq., of counsel). The Division of Taxation appeared by Mark Volk, Esq. (Nicholas A. Behuniak, Esq., of counsel).

Petitioner filed a brief in support of its exception. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Petitioner's request for oral argument was denied.

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

ISSUE

Whether the Division of Taxation properly disallowed a portion of the Empire Zones credits for real property taxes claimed by petitioner on its corporation franchise tax returns for the years 2005 and 2006.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for finding of fact “3,” which has been modified. The Administrative Law Judge’s findings of fact and the modified findings of fact are set forth below.¹

Petitioner, New Process Gear, Inc. (New Process Gear), a Delaware corporation authorized to do business in New York State, manufactures automobile components. New Process Gear was certified as a Qualified Empire Zone Enterprise (QEZE) on July 13, 2004 pursuant to Article 18-B of the General Municipal Law.

In 2005 and 2006, petitioner leased a manufacturing facility located in Onondaga County at 6600 New Venture Gear Drive, DeWitt, New York, from DCC 929, Inc. (formerly known as New Venture Gear, Inc.). Pursuant to a lease agreement, as amended on September 1, 2005, petitioner was obligated to pay real property taxes on the leased premises.

We modify finding of fact “3” of the Administrative Law Judge’s determination to read as follows:

Petitioner paid the 2005 and 2006 real property taxes on the leased premises. The record includes receipted real property tax bills issued by the Town of DeWitt, Onondaga County, New York, totaling \$1,272,659.00 and \$1,376,442.00 for the years 2005 and 2006, respectively. The Onondaga County Sanitary District Unit Charge was separately identified on the relevant county and town tax bills with a line item designation of “CSW15 Onon co san un.” The relevant county and town real property tax bills also identify separate and distinct charges for “Sewer maintenance,” which were assessed on an ad valorem basis. The Onondaga County Sanitary District Unit Charge was a component of the total real property taxes petitioner paid, and petitioner did not separate the charge from the remainder of the charges included on the real property tax bill. Petitioner believes that if the Onondaga County Sanitary District Unit Charge was not paid

¹ Where appropriate, references to “QEZE real property tax credit” have been changed to refer to “Empire Zones real property tax credit” or “Empire Zones RPTC.”

with the other charges on the real property tax bill, a lien would be assessed against the property for underpayment of taxes.²

Amounts received from payment of the Onondaga County Sanitary District Unit Charge are used to pay for the costs of maintenance, operation and improvements to the Onondaga County Sanitary District's sewer system.

The Onondaga County Sanitary District Unit Charge is based upon the units of water that petitioner discharges to the sanitary sewer system annually.³ In general, each business is assessed the Onondaga County Sanitary District Unit Charge based upon the amount of water the particular business uses.⁴ Users of septic systems are not assessed an Onondaga County Sanitary District Unit Charge. Onondaga County separately bills tax-exempt properties directly for the Onondaga County Sanitary District Unit Charge because such entities do not receive other real property tax statements.

Resolution 260 of the Onondaga County Legislature created the Onondaga County Sanitary District in 1978, which provided for its funding by sewer rents and taxes levied on an ad valorem basis (i.e., against assessed valuation of the real property). Resolution 260 refers to Article 11-A of the Onondaga County Administrative Code, which provided that the Legislature was empowered to establish how the costs of maintenance and operation of the sewers would be borne, including assessing parcels that were especially benefitted by the improvement in

² We modify this fact to more accurately reflect the record.

³ Residential properties are assessed the Onondaga County Sanitary District Unit Charge based upon a different formula. Single family homes are charged one unit per year and multiple-family dwellings are charged 0.75 units per year per dwelling.

⁴ The Onondaga County Department of Water Protection website states that “[b]usinesses that use a large volume of water for irrigation, HVAC, or other processes that do not return water to the sanitary sewer system can receive a credit toward their unit charge once they show the amount diverted.”

accordance with a proportionate benefit formula.

Petitioner deducts the Onondaga County Sanitary District Unit Charge that it pays each year on its federal income tax return, as it does with all charges included on the real property tax bills it pays. New Process Gear is a franchise taxpayer pursuant to Tax Law § 210 and timely filed its corporation franchise tax returns for the years at issue.

For the years 2005 and 2006, petitioner was eligible to claim 100 percent of the eligible real property taxes it paid in each of those years as the refundable Empire Zones RPTC. In fact, petitioner claimed a refundable Empire Zones RPTC in the amounts of \$1,272,659.00 and \$1,376,442.00 for the years 2005 and 2006, respectively.

The Division of Taxation (Division) conducted a desk audit of petitioner's franchise tax returns for the 2005 and 2006 taxable years. Following the desk audit, the Division denied, among other items, portions of the refundable Empire Zones RPTC claimed by petitioner in 2005 and 2006. The stated grounds for the Division's denial of a portion of the Empire Zones RPTC in each of those years was that the Onondaga County Sanitary District Unit Charge paid by petitioner was not deductible under Treasury Regulation § 1.164-4(a) and, therefore, could not be included in the refundable Empire Zones RPTC claimed.

The Division sent petitioner Statements of Tax Reduction or Overpayment, dated June 30, 2008, reducing petitioner's refunds for 2005 and 2006 by the amounts of \$336,047.00 and \$328,190.00, respectively.⁵ The amount of each reduction corresponded with the amount of the Onondaga County Sanitary District Unit Charge petitioner paid and claimed as a portion of its

⁵ For the year 2005, adjustments were also made to the refundable Empire Zones Wage Tax Credit and the Refundable Empire Zones Investment Tax Credit. For the year 2006, an adjustment was also made to the refundable Empire Zones Wage Tax Credit. Petitioner is not challenging any of the other refund adjustments made for the years at issue.

refundable Empire Zones RPTC for each year at issue.

At the hearing, the auditor testified:

The New York State tax law doesn't address what is property tax. That's why we refer to the Internal Revenue Code, and that's where we get our guidance from. (Hearing Transcript, p. 95).

He also explained that a redacted letter dated February 28, 2008, from Stafford Davis, a senior attorney in the Division's Office of Counsel, Legislation & Guidance - Income & Corporate Tax Section, was the sole basis for his determination of whether a charge was deductible as a real property tax under the Internal Revenue Code (IRC). The auditor also confirmed that the Division has not prepared or issued any guidance documents regarding this issue.⁶

Mr. Davis's letter states, in pertinent part, that:

Real property taxes are deductible under the IRC §164(a)(1). Under the IRC, 'real property taxes' are taxes imposed on interests in real property and levied for the general public welfare, but they are not taxes assessed against local benefits. There is a two-pronged test for deductibility. the [*sic*] taxes must be (1) levied for the general public welfare, and (2) levied at a like rate against all property in the jurisdictional territory.

The auditor conceded that the reason for his determination that the Onondaga County Sanitary District Unit Charge should not be included in the refundable Empire Zones RPTC was because the unit charge was based upon consumption. The auditor also stated that the test set forth in Mr. Davis's letter, despite being the only guidance he relied upon for the test of whether a particular charge constitutes "real property tax," does not refer to consumption in any way.

The auditor also conceded that the general public at large benefitted from a maintained sewer system. According to the auditor, if a property owner failed to pay the Onondaga County

⁶ This finding was reformatted, but substantively remains unmodified.

Sanitary District Unit Charge, it would “most likely” become a lien on the real property. Furthermore, the auditor testified that each taxpayer subject to the Onondaga County Sanitary District Unit Charge pays the same rate.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge observed the statutes authorizing the Empire Zones Program benefits, including former Tax Law § 15(e). Inasmuch as terms were undefined, the Administrative Law Judge found it proper to construe those terms in a manner consistent with their definitions in the Real Property Tax Law. The Administrative Law Judge observed that the charge at issue was proportional to the amount of benefit conferred because the charge is calculated based upon the units of water discharged to the system annually. As such, the Administrative Law Judge determined that the Onondaga County Sanitary District Unit Charge was a special assessment under Real Property Tax Law § 102(15). The Administrative Law Judge concluded that the subject charges could not be construed as “eligible real property taxes” because special assessments are specifically excluded from “taxes” under Real Property Tax Law § 102(20).

ARGUMENTS ON EXCEPTION

Petitioner takes exception only to the conclusions of law, arguing that the Administrative Law Judge erroneously concluded that the Onondaga County Sanitary District Unit Charge was not an “eligible real property tax” for purposes of the Empire Zones RPTC.

Petitioner argues that the Administrative Law Judge erroneously concluded that the subject charge was either a special assessment or an ad valorem levy. Petitioner contends that the charge does not meet the definition of a special assessment under Real Property Tax Law

§102(15) because the charge is not calculated based upon the benefit received by petitioner and because the benefits provided by the district extend beyond the boundaries of the district itself.

Petitioner further argues that even if the Onondaga County Sanitary District Unit Charge was a special assessment or ad valorem levy, it still qualifies as “eligible real property taxes” as that term is defined in former Tax Law § 15(e). Petitioner contends that the legislative history of the Empire Zones Program clearly indicates that the term, “eligible real property taxes,” includes the subject charges.

Petitioner also contends that the Administrative Law Judge erred in referring to the definitions contained in the Real Property Tax Law. It argues that if the Legislature intended the definition of “eligible real property taxes” to be tied directly to the definitions used in the Real Property Tax Law, then former Tax Law § 15(e) would have contained explicit references to those definitions. Petitioner asserts that the Legislature had ample opportunity to impose definitions from the Real Property Tax Law in former Tax Law § 15(e) as it has passed various amendments since the original enactment. Petitioner contends that the Legislature’s inaction proves that the terms within former Tax Law § 15(e) are to be construed independent of the Real Property Tax Law.

Petitioner also argues that it does not bear the burden of establishing entitlement to Empire Zones Program benefits. It asserts that these benefits are consideration pursuant to a contract between a QEZE and the State, and, therefore, the burden of proof associated with challenging a tax exemption is irrelevant.

In opposition, the Division argues that the determination should be affirmed because it was resolved in accordance with *Matter of Herrick* (Tax Appeals Tribunal, August 4, 2011) and

Matter of Stevenson (Tax Appeals Tribunal, August 4, 2011).

The Division argues that the Administrative Law Judge properly determined that the Onondaga County Sanitary District Unit Charge is a special assessment. In support of its argument, the Division references the municipal resolution creating the Special Assessment District, which provides that the properties in the district bear the cost of improvements, operations and maintenance in proportion to the benefits accrued by each property. As such, the Division maintains that the record shows that the Onondaga County Sanitary District Unit Charge cannot be deemed “eligible real property taxes” for purposes of former Tax Law § 15(e) because they are not taxes under the Real Property Tax Law.

The Division argues that it is proper to reference the Real Property Tax Law because both former and current Tax Law § 15(e) define “eligible real property taxes” as taxes imposed on real property. According to the Division, the terms “tax” and “special assessment,” as defined under the Real Property Tax Law, have never been used interchangeably. It further contends the term “tax” has never been interpreted to include “special assessments.” The Division contends that the Legislature would have amended the statute to include special assessments and ad valorem levies if that was its intent; however, it has declined to do so. As such, the Division argues that the Administrative Law Judge properly determined that “eligible real property taxes” under former Tax Law § 15(e) did not include the Onondaga County Sanitary District Unit Charge because it is not a tax on real property.

Lastly, the Division argues that the Administrative Law Judge correctly applied the burden of proof. Noting the relevant Tax Law and jurisprudence, it contends that petitioner bears the burden of showing entitlement to the statutory benefit. The Division argues that its

interpretation and application of former Tax Law § 15(e) are reasonable and consistent with the language and intent of the governing statutes, and that petitioner has not demonstrated that the charge at issue clearly falls within the statute creating the Empire Zones RPTC.

OPINION

We affirm the determination of the Administrative Law Judge.

The instant matter presents the question of whether the Onondaga County Sanitary District Unit Charge constitutes an “eligible real property tax” for the purpose of the Empire Zones RPTC.

This Tribunal addressed this exact question in *Matter of Stevenson (supra)*. Therein, we held that, under the Real Property Tax Law, the Onondaga County Sanitary District Unit Charge is properly classified as a “special assessment” (Real Property Tax Law § 102[15]), and, therefore, specifically excluded from the definition of a “tax” (Real Property Tax Law § 102[20]). As such, we concluded that amounts paid for the Onondaga County Sanitary District Unit Charge were not “eligible real property taxes” under former Tax Law § 15(e).

Herein, petitioner presents legal arguments that are identical to those we rejected in *Matter of Stevenson (supra)* and *Matter of Herrick (supra)*. We again reject the argument that this charge is not based upon the amount of benefit provided to the property. As stated in the Findings of Fact, the Onondaga County Sanitary District Unit Charge is generally based upon the amount of water used by a business. This is the very definition of a “special assessment” under Real Property Tax Law § 102(15). Petitioner introduced no evidence to the contrary. As such, we conclude that the Onondaga County Sanitary District Unit Charge was not an eligible real property tax for the Empire Zones RPTC because the charge was not a tax, but a special

assessment.

We need not address the 2010 amendment to Tax Law § 15(e) because the retroactive effective date does not apply to “maintenance and interest charges” (L 2010, ch 57, pt R, § 18). The Onondaga County Sanitary District Unit Charge is clearly assessed for maintenance purposes. As such, the 2010 amendment, which excludes special assessments from “eligible real property taxes,” has no bearing on this case.

We conclude that the Administrative Law Judge properly resolved the issues in this matter and that no argument raised on exception compels any further modification to the determination below.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of New Process Gear, Inc., is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of New Process Gear, Inc., is denied; and,
4. The Statements of Tax Reduction or Overpayment, dated June 30, 2008, are sustained.

DATED: Albany, New York
March 22, 2012

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner