STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	DECISION DTA NO. 823314
LANDMARK TRI-STATE, INC.	:	
for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Years 2006 and 2007.	:	

Petitioner, Landmark Tri-State, Inc., filed an exception to the determination of the Administrative Law Judge, issued on June 16, 2011. Petitioner appeared by Hiscock & Barclay, LLP (Kevin R. McAuliffe, Esq., and David G. Burch, Jr., Esq., of counsel). The Division of Taxation appeared by Mark Volk, Esq. (Robert Tompkins, Esq., of counsel).

Petitioner filed a brief in support. 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 portions of petitioner's claims for the Empire Zones Real Property Tax Credit for the years 2006 and 2007 on the grounds that certain special assessments did not constitute "eligible real property tax" for purposes of the credit against tax provided for in Tax Law § 15(a).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

The parties entered into a stipulation of facts, dated November 1, 2010 and November 22, 2010, which has been incorporated into the facts below without references to attachments.

Landmark Tri-State, Inc. (Landmark) is a member of Nocha, LLC (Nocha), the sole member of One Park Place, LLC (One Park Place).

One Park Place was certified as an Empire Zone Enterprise on July 31, 2002.

As Nocha is the sole member of One Park Place, it is a disregarded entity for tax purposes.

Nocha is a limited liability company and, as such, income, losses, and credits flow through to its members.

Under the terms of the Operating Agreement for Nocha, all deductions with respect to real property taxes paid on properties certified in an Empire Zone and all Empire Zones Real Property Tax Credits (RPTC) are allocated to petitioner.

Petitioner timely filed its corporate tax returns for the tax years 2006 and 2007.

One Park Place passed the employment test for the tax years 2006 and 2007, computed a 100% employment increase factor for those same years, and was entitled to an RPTC equal to the full amount of the eligible real property taxes paid for those years.

One Park Place pays eligible real property taxes on three parcels of land in the City of Syracuse, the tax bills for which included a downtown charge, sometimes referred to as the "Downtown Special Assessment Tax." These parcels are known as 300 State Street S. & Fayette

Street E., 345-67 Onondaga Street E. and 337 Onondaga Street E. All of the parcels are located in the Downtown Special Assessment District in the City of Syracuse.

The City of Syracuse 1988 General Ordinance Number 53 created a special assessment district within the City of Syracuse and provided that the properties in the district may be assessed according to a formula that reflected the benefits accruing to the various properties in the district by reason of the improvements. The district was formed for the benefit of properties within the special assessment district to further the construction of capital improvements and additional maintenance and operation costs, including extra security, snow plowing, sidewalk cleaning and special events.

General Ordinance Number 53, section 3(1), provided that all properties within the special assessment district were subject to assessment for the improvements and services provided and specifically provided that all properties need not be assessed uniformly for these benefits. The section also provided that properties could be assessed in accordance with a formula established by ordinance, which, at the sole discretion of the Common Council, reflects the benefits accruing to the various properties within the district by reason of the improvements. The ordinance also provided that tax-exempt properties may be included within the boundaries of the district but were not subject to the special assessment.

The formula, which was devised to assess the properties within the district for their share of the benefits received, was explained by David M. Clifford, First Deputy Commissioner of the City of Syracuse Department of Assessment, in a letter to the Division of Taxation dated November 19, 2010. He stated that there exist three zones within the Downtown Special Assessment District, each with its own rate. Once the Common Council approves the budget for

the district, each property is assessed based on the zone in which the property is located, its percentage share of total assessed value, its exempt status, and each property's share of the district front footage.

The Annual Report of the Downtown Committee of Syracuse, Inc., for the period July 1, 2006 to June 30, 2007 discusses the work performed by the Downtown Committee and includes a Financial Report, which reflects income, including that from special assessments, and expenses. The Annual Report notes that the district was created to provide the financial resources necessary to ensure the proper management of the area to improve the area's image, strengthen the economic base, increase its attractiveness, and assure that the district is clean, safe and accessible.

The Division of Taxation conducted a review of petitioner's corporate tax returns for the years 2006 and 2007.

Petitioner claimed the RPTC on its 2006 and 2007 returns based on its payment of real property taxes and other charges on its tax bills. The Division of Taxation denied a portion of the RPTC claimed, excluding the "Downtown Special Assessment Tax" and other special charges from eligible real property taxes included in the RPTC.

Petitioner received an Account Adjustment Notice, document locator number CB0706197833, dated October 24, 2007, reducing the RPTC by $25,313.00 for the tax year 2006 and setting forth specific reasons for the adjustment.

Petitioner received a second Account Adjustment Notice, document locator number CB0806256179, dated April 16, 2009, reducing the RPTC by $26,036.00 for the tax year 2007. In addition, petitioner received a Statement of Tax Reduction or Overpayment regarding the tax

year 2007, which explained the partial disallowance of the RPTC claimed as follows: "Based on IRC section 164, we have have [sic] disallowed Special Assessment taxes shown on the tax bills for the [Qualified Empire Zones Enterprise (QEZE)] single member LLC's, One Park Place, LLC and Maltbie/Division, LLC."

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 charges at issue were proportional to the amount of benefits conferred because the charges were calculated based upon .a benefit formula. As such, the Administrative Law Judge determined that the charges assessed for the Downtown Special Assessment District were special assessments 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 charges assessed for the Downtown Special Assessment District did not constitute "eligible real property taxes" for purposes of the Empire Zones RPTC.

Petitioner argues that the Administrative Law Judge erroneously concluded that the subject charges assessed for the Downtown Special Assessment District were either special

assessments or ad valorem levies. Petitioner contends that these charges did not meet the definition of a special assessment under Real Property Tax Law §102(15) because charges are not calculated based upon the benefits 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 charges assessed for the Downtown Special Assessment District were special assessments or ad valorem levies, they still qualify 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 Piccolo*** (Tax Appeals Tribunal, August 4, 2011), ***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 charges assessed for the Downtown Special Assessment District are special assessments. 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 charges assessed for the Downtown Special Assessment District 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 charges assessed for the Downtown Special Assessment District because they are not taxes 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 charges assessed for a special assessment district constitute "eligible real property taxes" for the purpose of the Empire Zones RPTC.

This Tribunal addressed this exact question in ***Matter of Piccolo*** (***supra***). Therein, we held that, under the Real Property Tax Law, similar charges assessed by a downtown improvement district were properly classified as special assessments (Real Property Tax Law § 102[15]). As such, those charges could not be considered "eligible real property taxes" because special assessments are specifically excluded from the definition of a "tax" under the Real Property Tax Law (Real Property Tax Law § 102[20]). We concluded in ***Matter of Piccolo*** that the taxpayer could not deduct amounts paid towards business improvement district charges because the charges were not "eligible real property taxes" under former Tax Law § 15(e).

We hold the same in the instant matter. Herein, petitioner presents legal arguments that are identical to those we rejected in ***Matter of Piccolo*** (***supra***), ***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, charges assessed for the Downtown Special Assessment District are based upon a benefit formula. This is the very definition of a "special assessment" under Real Property Tax Law § 102(15). We remain unpersuaded by petitioner's challenges based upon elements used in the formula to quantify the benefit provided by the Special Assessment District. The composite factors, calculations, or weights within a benefit formula do not alter the purpose or nature of the equation, which is to quantify the benefits provided to a taxpayer by the district. As such, we conclude that the charges assessed for the Downtown Special Assessment District were not eligible real property taxes for the Empire Zones RPTC because the charges were not taxes, but special assessments.

We also conclude that the Administrative Law Judge properly addressed the 2010 amendment to Tax Law § 15(e). The amendment does not have retroactive application to "maintenance and interest charges" (L 2010, ch 57, pt R, § 18). The charges assessed for the Downtown Special Assessment District are expressly assessed for maintenance purposes. As such, the 2010 amendment, which excludes special assessments from "eligible real property taxes," has no bearing on the instant matter.

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

Accordingly, its is ORDERED, ADJUDGED and DECREED that:

1. The exception of Landmark Tri-State, Inc., is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Landmark Tri-State, Inc., is denied; and,

4. The Account Adjustment Notices, dated October 4, 2007, and April 16, 2009, 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