STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions of **FRANK AND KRISTINE GIOTTO** for Redetermination of Deficiencies or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Tax Years 2014 and 2015.	:	DECISION DTA NOS. 829214 AND 829290

Petitioners, Frank and Kristine Giotto, filed an exception to the determination of the Administrative Law Judge issued on December 23, 2021. Petitioners appeared by Barclay Damon LLP (David G. Burch, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a brief in opposition. Petitioners filed a reply brief. Oral argument was heard in Albany, New York on September 29, 2022, which date began the six-month period for issuance of this decision.

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

ISSUE

Whether the Division of Taxation correctly calculated the Qualified Empire Zone Enterprise tax reduction credit pursuant to Tax Law § 16 for the years 2014 and 2015.[1]

[1] Tax Law § 16 was amended effective January 1, 2015. However, the amendments do not affect the parts of the law relevant herein and therefore Tax Law § 16 will not be referenced separately for 2014 and 2015.

FINDINGS OF FACT

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

1. Petitioners, Frank and Kristine Giotto, filed joint New York State income tax returns for tax years 2014 and 2015.

2. Petitioner Frank Giotto is the Chief Executive Officer and sole shareholder in two corporations, each of which are in the general business of manufacturing and distributing fiber optic and related products.

3. The two corporations, Force Guided Relays (FGR) and TLC-The Light Connection, Inc. (TLC), are each located in Oriskany, New York, and are certified in the Oneida/Herkimer Empire Zones program with an effective eligibility date of July 31, 2002.

4. Mr. Giotto also owns directly and through several trusts, 100% of the shares of stock in Fiber Instrument Sales, Inc. (FIS), a corporation also in the general business of the manufacture and distribution of fiber optic products.

5. FIS is located in Oriskany, New York, and is certified in the Oneida/Herkimer Empire Zones program with an effective eligibility date of June 20, 2002.

6. FGR, TLC and FIS are qualified empire zone enterprises (QEZEs).

7. FGR, TLC and FIS are each New York corporations that elected to be taxed under Subchapter S of the Internal Revenue Code.

8. All of the New York employees and assets of FGR, TLC and FIS are situated at the Empire Zone location.

9. As a shareholder of FGR, TLC and FIS, Mr. Giotto was eligible to claim, and did claim, certain empire zone benefits for the audit period. Included in these benefits was the tax reduction credit (TRC).

10. FGR, TLC and FIS each provided petitioners with federal schedule K-1s and New York schedule K-1 equivalents for the 2014 and 2015 tax years. The information provided on the federal and New York State schedule K-1s was used by petitioners to calculate the TRC claimed by petitioners on their New York State 2014 and 2015 personal income tax returns.

11. Pursuant to Tax Law § 16 (b), the TRC is the product of multiplying four factors: the benefit period factor, the employment increase factor, the zone allocation factor, and the tax factor.

12. The employment increase factor, the zone allocation factor, and the benefit period factor of the TRC for TLC and FGR in 2014 and for TLC, FGR, and FIS in 2015 are not in dispute.

13. The tax factor of the TRC is computed by shareholders on Claim for QEZE Tax Reduction Credit, form IT-604 (IT-604), which is filed with their personal income tax returns. The tax factor is the product of (i) the ratio of the shareholder's income from the QEZE from New York State sources to the shareholder's New York State adjusted gross income; and (ii) the shareholder's New York State income tax. The tax factor produces the portion of the shareholder's New York State income tax resulting from income from the QEZE that was allocated to New York.

14. The instructions to form IT-604 do not mention application of the business allocation percentage (BAP) in describing the procedure for calculating the tax factor as part of the TRC on returns prepared for shareholders of New York S corporations that are QEZEs. Line 21 of the

IT-604 states "Enter the amount of your income from the QEZE allocated within NYS (see instructions)." The instructions for Line 21 specific to shareholders of New York S corporations that are QEZEs as set forth on the IT-604-I state as follows:

> "This is the income from the New York S corporation that is a QEZE, allocable to New York State and included in New York adjusted gross income. Do not include any wages paid to you by the New York S corporation. The income allocable to New York State is the QEZE S corporation's income from New York State sources."

15. All of the income reported on line 21 of petitioners' IT-604 forms was income from the S corporations and was included in New York adjusted gross income.

16. In accordance with their interpretation of Tax Law § 16, petitioners applied the tax factor formula from finding of fact 11 to their individual returns and determined the tax factor component and TRC as shown in the following table on their IT-604s:

	2014 NYS Income From QEZE allocated within NYS	2014 Tax Factor	2014 TRC	2015 NYS Income From QEZE allocated within NYS	2015 Tax Factor	2015 TRC
FGR	$758,518.00	$66,542.00	$26,617.00	$820,347.00	$71,581.00	$14,316.00
TLC	$2,229,937.00	$195,433.00	$78,173.00	$2,507,706.00	$218,856.00	$43,771.00
FIS	N/A	N/A	N/A	$10,683,891.00	$932,525.00[2]	$23,779.00

17. Petitioners calculated their TRC in schedule F on each individual IT-604 as the product of their tax factor from line 24, and (i) the benefit period factor, (ii) the employment increase factor, and (iii) the zone allocation factor as provided by the respective S corporation.

[2] In paragraph 40 of the stipulation of facts submitted by the parties, it states that the tax factor for the IT-604 for FIS was $71,581. However, upon a review of the IT-604, the record shows that the tax factor for this IT-604 was $932,525.00.

The resulting TRC was set forth on each individual IT-604. Petitioners used the entire amount of income reported to them by the S corporations without applying the BAP.

18. The BAP for the 2014 and 2015 tax years as reported on the New York S Corporation Franchise Tax Return, form CT-3-S (CT-3-S), for each S corporation is predicated solely on the ratio of sales of New York State tangible personal property to all sales of tangible personal property. The location of property and employees does not factor into the calculation of the BAP, and the BAP does not impact the taxable income for a resident taxpayer.

19. The BAPs are not provided by S corporations to their shareholders on either the federal schedule K-1 or the New York schedule K-1 equivalent.

20. The BAP reported by FGR on its CT-3-S was 4.9025% for 2014 and 2.3772% for 2015.

21. The BAP reported by TLC on its CT-3-S was 25.6046% for 2014 and 26.0292% for 2015.

22. The BAP reported by FSI on its CT-3-S was 9.4106% for 2015.

23. The Division of Taxation (Division) performed an audit of petitioners' tax returns for 2014 and 2015 with respect to their claims for the TRC.

24. On February 24, 2017, the Division sent petitioners a letter advising them that it had completed its review of petitioners' TRC, among other credits, for tax year 2014. The Division found that petitioners improperly allocated all of TLC's and FGR's business income to New York State in calculating the tax factor. The letter provided that attribution of the income from an S corporation must include the ratio of the shareholder's income from the S corporation allocated within the state, entering into the New York adjusted gross income, to the shareholder's New York adjusted gross income. The letter advised that based on this requirement, adjustments

were made reducing the TRC for TLC and FGR. The TRC was reduced by applying the BAP for the respective S corporation to the New York State income from that corporation and using that new amount as the income from the S corporation allocated within the state.

25. The Division sent petitioners a similar letter on February 28, 2017 regarding the TRC claimed for 2015 for FGR, TLC and FIS. The Division made the same adjustments to the TRC in 2015 using the BAP for each S corporation to determine the shareholder's income from the S corporation allocated within the state.

26. The Division reduced petitioners' TRC for each entity by applying the BAP for each S corporation to the income amount from the QEZE allocated within New York State as follows:

a. The TRC for FGR for the 2014 tax year was reduced from $26,617.00 to $1,299.00.

b. The TRC for TLC for the 2014 tax year was reduced from $78,173.00 to $20,036.00.

c. The TRC for FGR for the 2015 tax year was reduced from $14,316.00 to $329.00.

d. The TRC for TLC for the 2015 tax year was reduced from $43,771.00 to $11,387.00.

e. The TRC for FIS for the 2015 tax year was reduced from $23,779.00 to $2,237.00.

27. In total, the Division reduced petitioners' TRC by $83,467.00 in 2014 and by $67,913.00 in 2015.

28. An account adjustment notice dated March 3, 2017 was issued to petitioners for 2014 recomputing the claimed overpayment of tax allowed to the next period to be $560,339.00 instead of the $647,562.00 requested based upon the adjustments attributable in part to the adjusted TRC.

29. An account adjustment notice dated March 8, 2017 was issued to petitioners for 2015 recomputing the claimed overpayment of tax allowed to the next period to be $595,048.00 instead of the $753,887.00 requested based upon the adjustments attributable in part to the adjusted TRC.

30. Petitioners did not claim any New York State resident credits on their 2014 and 2015 resident income tax returns.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge began her determination by reviewing the Tax Law provisions relating to the computation of the TRC for shareholders of an S corporation. The Administrative Law Judge noted that petitioners' New York State tax on income attributable to the three corporations, FGR, TLC and FIS, was computed pursuant to article 22 of the Tax Law. Next, the Administrative Law Judge reviewed petitioners' argument that all of their income from the three subchapter S corporations is based on economic activity within the qualified Empire Zone and, therefore, all of that New York State income should be the basis for the calculation of the TRC without application of the BAP, regardless of whether the product is shipped within New York or to points outside of New York.

The Administrative Law Judge found that petitioners' position directly conflicts with the Appellate Division decision in ***Matter of Purcell v New York State Tax Appeals Trib.*** (167 AD3d 1101 [3d Dept 2018], ***lv denied*** 33 NY3d 913 [2019], ***appeal dismissed*** 33 NY3d 999 [2019]). The Administrative Law Judge reviewed the facts of ***Purcell*** and determined that, in this case, the Division properly reduced petitioners' TRC by applying the S corporation's BAP to determine the portion of the S corporation's income that was allocated within the state for the tax years at issue. The Administrative Law Judge rejected petitioners' contention that factual

differences between ***Purcell*** and the present matter require a different result. The Administrative Law Judge also rejected petitioners' contention that the use of an S corporation's BAP to determine a shareholder's tax factor in computing the TRC is contrary to the legislative purposes of the empire zone program.

ARGUMENTS ON EXCEPTION

Petitioners argue that the procedure to calculate the TRC is clearly and unambiguously stated in Tax Law § 16 and that the determination incorrectly upheld the Division's use of the BAP in the calculation of the tax factor component of the TRC in this case.

Petitioners contend that the tax factor provision of Tax Law § 16 looks to the shareholder's, and not the corporation's, portion of income that is allocated to New York. Petitioners allege that all of their income from the S corporations was earned at empire zone locations and was taxed as New York income. Petitioners argue, accordingly, that their TRC should similarly be based on all their income from the S corporations, not from the S corporations' income multiplied by the S corporations' BAP, as proposed by the Division and approved by the Administrative Law Judge.

Petitioners note that there is no requirement to exclude income from sales outside of New York State under Tax Law § 16, nor does Tax Law § 16 require application of the BAP. Petitioners further note that form CT-604, by which corporations claim the TRC, does not require the BAP or BAP-related information, and does not require such information to be reported to shareholders for their TRC calculations.

Petitioners argue that the factual differences between ***Purcell*** and the instant matter require a different result. Specifically, petitioners note that the S corporation in ***Purcell*** had both assets and employees situated in Virginia and it received a significant portion of its revenues from

construction projects in that state. They note that the shareholders in ***Purcell*** also submitted claims for resident tax credits based on income tax paid to the state of Virginia. Petitioners assert, therefore, that the decision in ***Purcell*** focused on the exclusion of income resulting from out-of-state operations, assets and employees. In contrast, petitioners argue that all of the revenue from the three S corporations in the present case is derived solely from their activities in New York empire zones. They contend that the S corporations here have no assets, employees or operations outside of New York State. Given these differences, petitioners assert that, although the use of the BAP to limit the TRC credit may have been appropriate in ***Purcell***, it is not proper here. They contend that applying a BAP of less than 5% to a company that earns all of its income at its New York empire zone locations is wholly inappropriate and does not comport with the purpose of the statute. Petitioners assert that the TRC's zone allocation factor (Tax Law § 16 [e]) provides an appropriate means to account for assets and locations outside of an empire zone. Petitioners contend that the BAP should only be used to reduce the TRC when a taxpayer is seeking to apply both a TRC and a resident credit on the same income rather than the broad application of the BAP as advocated by the Division.

Petitioners contend further that the Division's application of the BAP in the calculation of the tax factor undermines the express public policy purpose of the QEZE program, which is to encourage businesses to create employment and to invest in economically depressed areas. Petitioners argue that the determination effectively excludes tax attributable to revenue derived from employment and operations in the Empire Zones from the TRC in contravention of the policy of the Empire Zones program. Petitioners assert that the aim of the TRC is to provide a complete abatement of tax liability attributable to a QEZE's income arising out of activities within an Empire Zone provided it has created the requisite number of new jobs, and based on its

benefit period year. They argue that simply selling products that may be shipped out of state does not circumvent the purpose of the Empire Zones program and in fact furthers the goals of the Legislature in creating the Empire Zones program to create net wealth generation in New York State.

The Division contends that the Administrative Law Judge correctly held that the application of the BAP was proper in this case. The Division argues that the eligibility for the TRC for shareholders of New York S corporations is based on only the income that is earned by the corporation within New York. It argues, therefore, that the BAP calculation must be made at the QEZE level, not the shareholder level. The Division contends that petitioners here disregarded the BAP and improperly included the entire amount of income reported to them by the S corporations. The Division asserts that the holding in ***Purcell*** is controlling here and can only be interpreted as to require incorporating the BAP. Contrary to the assertions of petitioners, the Division contends that ***Purcell*** is not limited to the circumstances of that case. The Division also asserts that, although referenced in ***Purcell***, the claim of a resident credit is not relevant in computing the TRC here.

Finally, the Division asserts that its method of computing the TRC herein is not contrary to the legislative intent underlying the Empire Zones program. It argues that the application of the BAP here supports the legislative intention to provide specific incentives in specific areas of the state to encourage job creation and economic development.

OPINION

As the present dispute is a matter of statutory interpretation, the purpose of our review is to ascertain and give effect to the discernible intent of the Legislature (***see Matter of 1605 Book Ctr. v Tax Appeals Trib. of State of N.Y.***, 83 NY2d 240, 244-45 [1994], ***cert denied*** 513 US 811

[1994]). "[W]hen the language of a tax statute is unambiguous, it should be construed so as to give effect to the plain meaning of the words used" [citation omitted]) (***New York State Assn. of Counties v Axelrod***, 213 AD2d 18, 24 [3d Dept 1995], ***lv dismissed*** 87 NY2d 918 [1996]). Every word of the statute must, if possible, be given meaning (***Sanders v Winship***, 57 NY2d 391, 396 [1982]). This is because "[t]he statutory text is the clearest indicator of legislative intent" (***Matter of DaimlerChrysler Corp. v Spitzer***, 7 NY3d 653, 660 [2006]).

Generally, tax credit statutes are similar to, and should be construed in the same manner as, statutes creating tax exemptions (***see Matter of Purcell v New York State Tax Appeals Trib.***). That is, such statutes must be strictly construed against the taxpayer and, if ambiguity arises, against the exemption, although such statutes should not be interpreted so narrowly as to defeat their settled purposes (***Matter of Grace v New York State Tax Commn.***, 37 NY2d 193, 196 [1975], ***rearg denied*** 37 NY2d 816 [1975], ***lv denied*** 338 NE2d 330 [1975]). Petitioner must show that its proffered interpretation of the statute is not only plausible, but also that it is the only reasonable construction (Tax Law § 1089 [e]; ***Matter of Forest City Realty Trust, Inc. v Tax Appeals Trib. of the State of N.Y.***, 188 AD3d 1317, 1318 [3d Dept 2020]; ***Matter of Piccolo v New York State Tax Appeals Trib.***, 108 AD3d 107, 111-112 [3d Dept 2013]).

Turning to the matter at issue, the New York State Economic Development Zones program (EDZ Program) was created by the Legislature in 1986 to provide tax benefits and incentives to qualified businesses to promote economic development and job creation in areas of the state that were deemed to need such assistance (***see*** General Municipal Law § 956). In 2000, Economic Development Zones were renamed Empire Zones (L 2000, ch 63, part GG). Businesses located in qualifying Empire Zone areas and that otherwise meet the statute's criteria could apply to the Department of Economic Development (DED) for a certificate of eligibility,

which they could then submit to the Department of Taxation and Finance in support of a claim for tax credits (***see*** General Municipal Law § 959 [a]). A QEZE is a business enterprise certified under article 18-B of the General Municipal Law that meets the employment test specified in Tax Law § 14 (b) (Tax Law § 14 [a]).

The TRC under Tax Law § 16 is one of the tax benefits available under the Empire Zones program. It is a credit against franchise taxes imposed directly on the QEZE or, where the QEZE is a disregarded or flow-through entity for tax reporting purposes, personal income taxes imposed on its owners (Tax Law § 16 [a]). Where the QEZE is organized as a New York subchapter S corporation, the shareholders of the S corporation may apply the TRC against their personal income taxes imposed by Article 22 (Tax Law §§ 16 (f) (2) (C), 606 [i] [1] [B] [xvi], [cc]). The three subchapter S corporations in this matter are certified QEZEs and are eligible to receive the TRC (***see*** General Municipal Law § 959 [a]).[3] The TRC claimant is petitioner, Frank Giotto, an S corporation shareholder.

The amount of the TRC is "the product of (i) the benefit period factor, (ii) the employment increase factor, (iii) the zone allocation factor and (iv) the tax factor" (Tax Law § 16 [b]). There is no dispute as to the amounts determined for the benefit period factor, the employment increase factor and the zone allocation factor. Further, there is no dispute that those factors must be determined at the entity level and be based upon the business activity of the QEZE. The present matter concerns only the proper computation of the tax factor to calculate the TRC.

[3] Although the Empire Zones program expired on July 1, 2010, a business enterprise certified pursuant to Article 18-B of the General Municipal Law as of June 30, 2010 may continue to claim the TRC for the remainder of its benefit period, so long as it meets the relevant eligibility requirements.

Tax Law § 16 (f) (2) (C) provides that the tax factor for shareholders of an S corporation that is a QEZE shall be calculated as follows:

> "Where the taxpayer is a shareholder of a New York S corporation which is a qualified empire zone enterprise, the shareholder's tax factor shall be that portion of the [taxpayer's New York income tax for the taxable year] which is attributable to the income of the S corporation. Such attribution shall be made in accordance with the ratio of *the shareholder's income from the S corporation allocated within the state, entering into New York adjusted gross income*, to the shareholder's New York adjusted gross income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment which reasonably reflects the portion of the shareholder's tax attributable to the income of the qualified empire zone enterprise. In no event may the ratio so determined exceed 1.0" (emphasis added).

As noted, petitioners argue that Tax Law § 16 (f) (2) (C) requires that the tax factor be based on the income of the S corporation that entered in their New York adjusted gross income. They assert that, since they are New York residents and all of their income was earned at empire zone locations, it was proper for them to include all of the income from the S corporations in the calculation of the tax factor.

The Division, on the other hand, contends that the eligibility for the TRC for shareholders of New York S corporations is based on only the income that is earned by the corporation in New York. The Division argues, therefore, that petitioners were required to use the S corporations' BAP to allocate the QEZE's gross receipts that are attributable to New York State when calculating the tax factor. We agree.

Support for this interpretation of the Tax Law § 16 (f) (2) (C) is found in ***Matter of Purcell v New York State Tax Appeals Trib.*** In ***Purcell***, the court determined that it is rational to interpret Tax Law § 16 (f) (2) (C) to require allocation of a New York S corporation's income for resident shareholders based on the BAP reported by the

corporation.[4] The court in ***Purcell*** found that such an interpretation gives meaning to all the words in Tax Law § 16 (f) (2) (C), consistent with the rules of statutory construction (***id.***; ***see also*** McKinney's Cons Laws of NY, Book 1, Statutes § 231). The taxpayer in ***Purcell*** was a resident shareholder of a QEZE S Corporation engaged in the business of constructing commercial buildings, primarily in New York and Virginia, using prefabricated systems that it manufactured in the empire zone in which it was certified (167 AD3d at 1105). The court in ***Purcell*** expressly rejected the interpretation of Tax Law § 16 (f) (2) (C) advanced by petitioners in the present matter, i.e., that all of a resident shareholder's income from an S corporation is properly included in the numerator of the tax factor fraction. This proposed interpretation was deemed "facially implausible and unreasonable" because it "impermissibly render[s]" the phrase "allocated within the state" as used in Tax Law § 16 (f) (2) (C) superfluous or meaningless (***id.*** at 1104). Petitioners in ***Matter of Purcell*** had offered no alternative interpretation of this phrase and neither do petitioners in this matter.

As argued by the Division, nonresident shareholders must allocate their S corporation income to New York by application of the corporation's BAP (***id.*** at 1105; ***see also*** Tax Law § 632 [a] [2]). A resident shareholder, of course, would not need to allocate their income, as all of their income is subject to New York tax. Thus, ***Purcell*** supports the Division's interpretation of Tax Law § 16 (f) (2) (C) by noting favorably that an allocation of a resident shareholder's

[4] During the period at issue in ***Purcell*** (2008-2010) and the years at issue here (2014 and 2015), the BAP was defined, generally, as the ratio of New York-allocated business receipts to total business receipts (Tax Law former § 210 [3] [a] [10] [A] [ii]). For BAP purposes, receipts from sales of tangible personal property were generally allocated based on the location of the purchaser and receipts from sales of services were generally allocated based on the place of performance (***see*** Tax Law former § 210 [3] [a] [2] [A], [B]). Corporate tax reform legislation in 2014 continued this receipts-based taxing scheme in a new Tax Law § 210-A that was effective in 2015 (***see*** Tax Law former § 210-A [2]).

income from the S corporation via the S corporation's BAP results in equal benefits for both resident and nonresident shareholders (***id.*** at 1104). By way of example, if a New York Subchapter S corporation had both resident and nonresident shareholders, petitioner's interpretation of the statute would result in the nonresident shareholders receiving QEZE credits based only on the corporation's New York source income, as determined by application of the BAP, while the resident shareholders would receive QEZE credits based on all of the corporation's income wherever earned or sourced. The decision in ***Purcell*** also notes that its holding ensures that QEZE tax reduction credits for S corporation shareholders is based only on income earned by the corporation in New York (***id.*** at 1105).

Petitioners here seek to distinguish ***Purcell*** on the facts, contrasting the Virginia business activity of the S corporation in that case with the lack of any out-of-state operations for the three corporations here. As we noted in ***Matter of Sam and Miriam Goldstein***, Tax Appeals Tribunal, April 21, 2022 and ***Matter of Herman and Blimie Schreiber***, Tax Appeals Tribunal, April 21, 2022, this line of argument is unavailing as ***Purcell*** rejects petitioners' argument that the location of a corporation's operations should determine any allocation for purposes of the tax factor. ***Purcell*** holds that the language of Tax Law § 16 (f) (2) (C) requires allocation of an S corporation's income based on the corporation's BAP when computing the tax factor for a resident shareholder. In ***Matters of Goldstein and Schreiber***, the certified QEZE was a New York corporation located in an empire zone in New York City. The corporation was taxed under Subchapter S of the Internal Revenue Code, like the three corporations in this matter. Petitioners Goldstein and Schreiber were partners and owned the stock of the corporation. Petitioners in those matters represented that all of corporation's business activity took place within the New York empire zone, and all of its employees and assets were situated there, as well. Like the

corporations in the present matter, the S corporation in ***Matters of Goldstein and Schreiber*** had out-of-state sales and shipped goods to out-of-state purchasers. Based upon the facts of that proceeding, we agreed that ***Purcell*** was controlling and decided in favor of the Division. We see no reason not to apply the reasoning used in those cases to the present one. As noted, the BAP in those cases, as in this case, was based solely on business receipts during the period at issue. Hence, ***Purcell*** is not distinguishable based on the location of the S corporation's business activity, assets, or employees.

Petitioners further argue that the taxpayer in ***Purcell*** claimed resident credits for income taxes paid to Virginia attributable to corporate income derived from construction projects in that state. Petitioners contend that this fact created issues of fairness and misuse of tax credits in that case that are not present here and thus justify a different result. We disagree. As noted, ***Purcell*** analyzes Tax Law § 16 (f) in accordance with principles of statutory construction and does not rely on the fact of the resident tax credits in reaching its holding.

Finally, ***Purcell*** addresses petitioners' public policy argument and refutes it by noting that the interpretation proffered by the Division gives meaning to the disputed phrase and ensures that eligibility for TRC for shareholders of New York S corporations is based on only New York sourced income.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that:

1. The exception of Frank and Kristine Giotto is denied;

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

3. The petitions of Frank and Kristine Giotto are denied; and

4. The account adjustment notices, dated March 3, 2017 and March 8, 2017, denying in part petitioners' claims for credit or refund, are sustained.

Dated: Albany, New York
March 23, 2023

/s/ Anthony Giardina
Anthony Giardina
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Cynthia M. Monaco
Cynthia M. Monaco
Commissioner