

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
MICHAEL PIAZZA : DETERMINATION
 : DTA NO. 827784
for Redetermination of a Deficiency or for Refund :
of New York State and City Personal Income :
Taxes under Article 22 of the Tax Law and the :
Administrative Code of the City of New York :
for the Years 2011 through 2014. :

Petitioner, Michael Piazza, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under article 22 of the Tax Law and the Administrative Code of the City of New York for the years 2011 through 2014.

On July 2, 2018 and July 5, 2018, petitioner, by his representative, John J. Greco, Esq., and the Division of Taxation, by its representative, Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), waived a hearing and agreed to submit this matter for determination based upon documents and briefs to be submitted by January 18, 2019, which date began the six-month period for issuance of this determination. After review of the evidence and arguments presented, James P. Connolly, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly disallowed a portion of petitioner's empire zone real property tax credits claimed as a pass-through via Crossfield Management, LLC, for the tax years 2011 through 2014, on the basis that the LLC's first benefit year was the tax year ended December 31, 2001, and not December 31, 2002, as claimed by petitioner.

FINDINGS OF FACT

The parties submitted a joint stipulation of facts into the record. Except as noted, such stipulated facts have been substantially incorporated into the findings of fact set forth herein.

1. During the tax years 2011 through 2014 (the years at issue), petitioner, Michael Piazza, was the 100% owner of Crossfield Management, LLC (Crossfield).

2. In October 2001, Crossfield filed an application for certification as a qualified empire zone enterprise (QEZE) for a proposed new business involving its purchase and redevelopment of an existing factory building at 77 Cornell Street in Kingston, New York (Kingston property), within the Kingston/Town of Ulster Empire Zone.

3. Crossfield had no assets or activity in 2001, but closed on the Kingston property on January 15, 2002. During the years at issue, it filed New York State partnership returns (form IT-204) on a calendar year basis.

4. Petitioner was issued an “empire zones program certificate of eligibility” (certificate of eligibility) for the Kingston property with an “[i]ssue date” of January 17, 2002. The certificate specified petitioner was “eligible to receive the benefits referred to in [General Municipal Law § 966]” and that:

“Such eligibility shall be in effect as of 10/25/01 and continue in effect until terminated by operation of law or by action taken pursuant to such laws, rules and regulations as may be applicable.”

5. Tax Law § 15 (b) provides that the amount of the QEZE credit for real property taxes (RPTC) for a given taxable year shall be the product of the “benefit period factor,” the “employment increase factor,” and the amount of “eligible real property taxes” paid or incurred by the qualified empire zone enterprise (QEZE) during the taxable year. Only the computation of the benefit period factor is at issue in this matter. The amount of the benefit period factor varies

over a 15-year period, the starting point of which is the central issue herein. The amount of the factor is 1.0 for the first 10 years, and then declines by 20% each year, until it becomes zero for the fifteenth year.

6. In June 2014, petitioner filed amended New York State personal income tax returns (forms IT-201-X) for tax years 2011 through 2013 to claim additional RPTC based on higher benefit period factors shown on attached forms IT-606 (claim for QEZE credit for real property taxes). The higher QEZE benefit period factors were attributable to petitioner's conclusion that the first year of Crossfield's benefit period was 2002 and not 2001, as it had claimed on its original returns.

7. Petitioner filed a personal income tax return (form IT-201) for 2014, in which he claimed RPTC in the amount of \$18,392.00, based, again, on the conclusion that 2002 was the first year of Crossfield's benefit period.

8. All the forms IT-606 attached to the amended returns for 2011 through 2013, as well as petitioner's return for 2014, use "10-25-2001" as the "[d]ate of first certification by Empire State Development." The record also includes a copy of petitioner's Empire Zone Retention Certificate (EZRC), as issued by the Empire State Development Corporation (ESDC). Such a certificate was required in order to claim empire zone tax credits for tax years 2008 and after.¹ Consistent with its certificate of eligibility, Crossfield's EZRC lists the company's "Approval Date" as "10/25/2001."

¹ Chapter 57 of the Laws of 2009 amended the General Municipal Law to enact reforms to the empire zones program. As relevant here, the 2009 amendments required the Commissioner of Economic Development to review all existing certified business enterprises to determine if they could continue their status as enterprises allowed to participate in the empire zones program so as to remain qualified for empire zone benefits (*see* General Municipal Law § 959 [w]). It appears that the described EZRC was issued as a consequence of such review.

9. Based on the amended returns, the Division of Taxation (Division) issued refunds to petitioner as follows: \$8,748.00 for tax year 2011; \$8,680.00 for tax year 2012; and \$9,053.00 for tax year 2013. For tax year 2014, petitioner claimed a RPTC in the amount of \$18,392.00, which the Division granted.

10. The Division conducted a review of petitioner's personal income tax returns for the years at issue. It determined that petitioner had used 2002 as the first year of the 15-year benefit period, when, in the Division's view, petitioner should have used 2001, based on the certificate of eligibility issued to Crossfield. The Division concluded that, as a result of this claimed error, petitioner had used a benefit period factor that was too high for each of the years at issue.

11. As a result of its examination of petitioner's amended returns, the Division issued notices of deficiency (notices), dated October 9, 2015, for the 2011 through 2014 tax years, asserting additional personal income tax due from petitioner, plus interest, but no penalty, as follows:

<u>Assessment Identification Number</u>	<u>Tax Year</u>	<u>Tax Amount</u>
L-043781480	2011	\$8,748.00
L-043781481	2012	\$8,680.00
L-043781482	2013	\$9,111.00
L-043781483	2014	\$9,196.00

12. Each of the notices explained that the deficiency was due to the Division's reduction of the benefit period factor used by petitioner, as follows:

<u>Tax Year</u>	<u>Benefit Period Factor used by Petitioner</u>	<u>Benefit Period Factor used by the Division</u>
2011	1.0	.8
2012	.8	.6
2013	.6	.4
2014	.4	.2

13. Petitioner timely filed a request for a conciliation conference with the Bureau of Conciliation and Mediation Services (BCMS), which issued a conciliation order that made no changes in the notices, noting merely that it “sustained” the notices.²

14. Petitioner’s submissions included an affidavit sworn to by him, in which he asserted, in pertinent part, that:

“I was required by Kingston/Town of Ulster Empire Zone office to make application for Empire Zone Benefits prior to the purchase of the [Kingston property]. Therefore, I submitted an application for Empire Zone benefits in 2001, as I was directed to do. As previously stated, [Crossfield] had no business, no activity and no assets in 2001.”

The affidavit provides no further details about petitioner’s interactions with the Kingston/Town of Ulster Empire Zone office.

CONCLUSIONS OF LAW

A. The only issue in this matter is the proper calculation of the RPTC applicable to Crossfield’s 2011 through 2014 tax years, which credits flow through to petitioner as its sole owner in calculating his personal income tax liability (*see* Tax Law § 606 [bb]). Tax credit statutes, such as the one at issue, should be construed in the same manner as statutes creating tax

² The parties’ stipulation of facts asserts that “[a]dditional penalties were added to Notice of Deficiencies systematically in years 2013 and 2014 when none applied in Notice of Deficiencies.” Because the conciliation order simply sustained the notices and did not add penalty, this stipulation of the parties is not accepted as a fact herein.

exemptions (*see Matter of Piccolo v New York State Tax Appeals Trib.*, 108 AD3d 107 [3d Dept 2013]). “That is, such statutes must be strictly and narrowly construed against the taxpayer” (*Matter of Grimm*, Tax Appeals Tribunal, January 11, 2018), although not so narrowly as to defeat the purpose of the exemption (*see id.*). This means that petitioner has the burden to establish “unambiguous entitlement” to the claimed statutory benefit (*Matter of United Parcel Serv., Inc. v Tax Appeals Trib. of the State of N.Y.*, 98 AD3d 796, 798 [3d Dept 2012], *lv denied* 20 NY3d 860 [2013]). With regard to any issues of statutory construction, petitioner must prove that his interpretation is the only reasonable construction (*Matter of American Food & Vending Corp. v New York State Tax Appeals Trib.*, 144 AD3d 1227 [3d Dept 2016]).

B. The RPTC was enacted in 2000 (chapter 63 of the Laws of 2000) and is codified in Tax Law §§ 14 and 15.³ The RPTC is one of the tax benefits available to QEZEes under the economic zones development program, now known as the empire zones program, which was enacted in order to spur economic growth and job creation (*see* General Municipal Law § 956; L 1986, c 686). The empire zones program is overseen by the Department of Economic Development, pursuant to General Municipal Law (GML) article 18-B, § 959. Under the program, the Commissioner of Economic Development is authorized to certify “business enterprises” as eligible to receive various benefits, including tax benefits, that are available only to such certified enterprises (*see* GML § 959 [a]). A QEZE is a business enterprise that has been certified under GML article 18, and that also meets an employment test (*see* Tax Law § 14 [a]).⁴

³ This determination shall refer to the versions of Tax Law §§ 14 and 15 as enacted by part GG of chapter 63 of the laws of 2000 and retroactively amended by part CC of chapter 85 of the laws of 2002.

⁴ The term “eligible real property taxes” means “taxes imposed on real property which is owned by the QEZE and located in an empire zone with respect to which the QEZE is certified pursuant to article [18-B] of the [GML] . . .” (Tax Law § 15 [e]).

C. As noted above, of the three factors that must be multiplied to compute the amount of the RPTC under Tax Law § 15 (b), the parties only disagree regarding the proper calculation of the benefit period factor. Tax Law § 15 (c) sets forth the amount of the benefit period factor in a table as follows:

<u>Taxable year of the benefit period:</u>	<u>Benefit period factor:</u>
1 through 10	1.0
11	.8
12	.6
13	.4
14	.2
15	0

Thus, the amount of the benefit period factor for any given year is determined by the benefit year, in the 15-year benefit period, in which the business enterprise finds itself. In arguing that petitioner’s benefit period started in 2001, rather than in 2002, as petitioner claims, the Division advances the following analysis. The term “business tax benefit period” is defined as “in the case of a business enterprise with a test date occurring on or before [December 31, 2001], the first fifteen taxable years beginning on or after [January 1, 2001]” (*see* Tax Law § 14 [a] [1]). “Test date” is defined to mean “the later of [July 1, 2000] or the date prior to [July 1, 2005], on which the business enterprise was first certified under article [18-b] of the [GML]” (*see* Tax Law § 14 [e]). Under the terms of the certificate issued to Crossfield, the company was certified effective October 25, 2001. Since that date is after July 1, 2000, and prior to July 1, 2005, then Crossfield’s “test date” was the date it was first certified. Given that its certificate of eligibility

makes its certification as a QEZE effective October 25, 2001, Crossfield's test date is October 25, 2001. Because Crossfield files under article 22 on a calendar year basis, it follows that Crossfield's benefit period started on January 1, 2001, i.e., that the first year of its benefit period was the calendar year 2001.

D. In arguing that, contrary to the Division's analysis, the first year of Crossfield's benefit period is 2002, petitioner does not present a statutory analysis, such as the one set forth above. Rather, petitioner argues that it would be "too narrow" to construe Tax Law § 14 to make 2001 the first year of Crossfield's benefit period before its certificate of eligibility was issued and before it acquired any assets. According to petitioner, such an interpretation of Tax Law § 14 is not in keeping with the economic development policy goal of the empire zone program (*see* GML § 956), and would "unlawfully shorten the fifteen . . . year benefit period." In petitioner's view, such an interpretation of § 14 must be rejected because "the interpretation of an exemption statute should not be so narrow and literal as to defeat its settled purpose," citing *Engle v Talarico* (33 NY2d 237 [1973]).

Petitioner's argument that the Division erred in treating 2001 as the first year of Crossfield's benefit period is not sufficient to meet his burden of showing that his interpretation of Tax Law § 14 is the only reasonable one and that he, therefore, is "unambiguous[ly] entitle[d]" to the RPTC he claimed (*United Parcel Serv., Inc.*). Under Tax Law § 14, the first year of a business enterprise's benefit period is simply not the first year in which the enterprise has acquired property and will thus have paid real property tax, so as to be in a position to benefit from the RPTC. Rather, the first year of a business enterprise's benefit period clearly depends on the enterprise's test date, which, here, as shown above, is the date "on which the business enterprise was first certified under article [18-B] of the [GML]" (Tax Law § 14 [e]). The

certificate of eligibility issued by the Commissioner of Economic Development makes Crossfield's certification effective October 25, 2001, which means, under § 14, its benefit period starts January 1, 2001. Moreover, the Commissioner of Economic Development was not free to choose any date as the effective date of the certificate of eligibility. Rather, that department's regulations provide as follows:

“the effective date of a certification shall be the date the chair of the local empire zone administrative board signed the application indicating that the local zone administrative board recommended the business enterprise for certification, unless, upon petition by the business enterprise the commissioner approves as an effective date:

(1) the date the application for certification is approved by the commissioner” (5 NYCRR § 11.6 [b]).⁵

Petitioner does not dispute that, in making Crossfield's certification effective October 25, 2001, the Commissioner of Economic Development followed that department's regulations. Instead, the implication of his argument is that the regulation improperly denies Crossfield a year of its benefit period by making the date of certification the date the chair of the local empire zone administrative board signed petitioner's application for QEZE status, and not the issuance date of the certificate of eligibility, which, necessarily would be later. As an adjudicatory body with limited jurisdiction, the Division of Tax Appeals may only exercise such powers as have been conferred on it by its governing statute (*see Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom Matter of New York State Dept. of Taxation & Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [1991]). Therefore, this forum cannot extend its authority to disputes that have not been specifically delegated to it (*see Matter of Hooper*, Tax Appeals

⁵ The Department of Economic Development is authorized to “promulgate regulations governing . . . (ii) the application process; and (iii) the joint certification by the commissioner of economic development” (GML § 959 [a]).

Tribunal, July 1, 2010). The Tax Law authorizes the Division of Tax Appeals to invalidate regulations of the Division (*see* Tax Law § 2006 [7]), not the regulations of any other agency. Thus, the Division of Tax Appeals is without power to accept petitioner's implied argument that 5 NYCRR § 11.6 (b) is invalid.

E. Petitioner also argues that the doctrine of estoppel should be applied against the Division here to prevent it from treating 2001 as the first year of Crossfield's benefit period because the Division, by doing so, deprives petitioner of one year of RPTC, which is "manifestly unfair and unjust," citing *Matter of Sachs v Tully* (79 AD2d 1056 [2d Dept 1981]). Equitable estoppel may be invoked against a government agency charged with the administration of taxes only where exceptional circumstances are present and application of the doctrine is necessary to prevent a "manifest injustice" (*see Matter of Suburban Restoration Co. v Tax Appeals Trib. of State of N.Y.*, 299 AD2d 751, 753 [3d Dept 2002]). Three requirements must be met for the doctrine to apply:

"(1) there was a misrepresentation made by the government to a party and the government had reason to believe that the party would rely upon the misrepresentation;

(2) the party's reliance on the government's misrepresentation was reasonable; and

(3) prior to the party discovering the truth, the party acted to its detriment based upon the misrepresentation" (*Matter of Ryan*, Tax Appeals Tribunal, September 12, 2013).

Here, petitioner's hearing brief does not identify any misrepresentation on the part of the government. Petitioner's affidavit notes that the local zone administrator "required" him to file Crossfield's application for QEZE status in 2001 even prior to Crossfield's acquisition of the Kingston property. It is true that, if petitioner had waited to file Crossfield's application for QEZE status until after Crossfield had acquired the Kingston property, Crossfield (and petitioner

derivatively) would presumably have qualified for RPTC in the first year of its benefit period. Nonetheless, the affidavit is not sufficiently detailed to establish exactly what the local zone administrator told him and thus does not establish that any governmental entity here made any misrepresentation to petitioner (*see Matter of Tsoumas*, Tax Appeals Tribunal, June 15, 2017 [where context supplied by petitioner is not sufficient to determine whether statement relied on by petitioner as misleading is in fact misleading, estoppel doctrine does not apply]).

F. Finally, petitioner claims that penalties were wrongly added to the notices at BCMS. The notices did not include penalties as issued and the conciliation order in the record does not show penalty being added; rather, the conciliation order merely states that the notices “are sustained.” Thus, despite the parties’ stipulation that “[a]dditional penalties were added to Notice of Deficiencies systematically in years 2013 and 2014,” it is determined that no penalties have been imposed with regard the tax asserted due in the notices issued for 2013 and 2014. Accordingly, petitioner’s argument regarding the imposition of penalty is irrelevant.

G. The petition of Michael Piazza is denied, and the notices of deficiency dated October 9, 2015, are hereby sustained.

DATED: Albany, New York
July 11, 2019

/s/ James P. Connolly
ADMINISTRATIVE LAW JUDGE