STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ROGER L. BURDICK AND SHIRLEY BURDICK	:	DETERMINATION DTA NO. 823485
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 2004, 2005, 2006 and 2007.	:	

Petitioners, Roger L. Burdick and Shirley Burdick, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 2004, 2005, 2006 and 2007.

On October 1, 2010 and October 15, 2010, respectively, petitioners, appearing by Hiscock and Barclay, LLP (David G. Burch, Jr., Esq., of counsel), and the Division of Taxation, appearing by Mark F. Volk, Esq. (Margaret T. Neri, Esq., of counsel), waived a hearing and submitted the matter for determination based on documents and briefs to be submitted by May 17, 2011, which date began the six-month period for issuance of this determination. After due consideration of the documents and arguments submitted, Joseph W. Pinto, Jr., Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly disallowed portions of petitioners' claims for the QEZE real property tax credit on the grounds that certain special assessments or ad valorem levies did not constitute "eligible real property taxes" for purposes of the credit against tax provided for in Tax Law § 15(a).

FINDINGS OF FACT

1. Petitioners, Roger L. Burdick and Shirley Burdick, timely filed joint New York State personal income tax returns for the years 2004, 2005, 2006 and 2007.[1]

2. Mr. Burdick was the sole member of RLB Development, LLC, a single member New York limited liability company that was certified as a qualified Empire Zone enterprise on December 28, 2001 pursuant to Article 18-A of the New York State General Municipal Law.

3. On each of the New York State personal income tax returns filed for the years 2004, 2005, 2006 and 2007, petitioners claimed the Empire Zone real property tax credit (RPTC) for county and municipal taxes and other charges paid by RLB Development, LLC.

4. With respect to the year 2004, the Division of Taxation (Division) issued a notice of deficiency to petitioners, number L-030251510-9, which was based upon certain disallowed credits taken by petitioners on their return. The total assessment, allowing for a mathematical error, was $7,555.95, which was paid by petitioners on August 6, 2008. Subsequently, petitioners sought a refund for the full amount paid on the assessment.

5. On March 25, 2009, the Division issued a Notice of Disallowance to petitioners denying the refund claim for the year 2004 in full. The notice stated, in part, as follows:

> Internal Revenue Code §§ 1.164-4 [*sic*] states that special assessments are not deductible as property taxes.
>
> * * *
>
> As tax credits are to be strictly construed, it is our position that a special ad valorem levy or a special assessment, or charges that are not based on the assessed value of the real property do not qualify as real property taxes for the QEZE Real Property Tax Credit.

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[1]Although some of the notices were addressed to Roger Burdick only, petitioners filed their returns and petition jointly and will be referred to throughout in the plural.

6. With respect to the year 2005, the Division issued to petitioners a Notice of Deficiency, L-030251508-1, followed by a Response to Taxpayer Inquiry, dated July 29, 2008,[2] which stated that the Division had recalculated the amount of special assessments disallowed on the 2005 return, resulting in a total disallowance of $6,536.14 plus interest.

7. Petitioners paid the corrected amount stated on the Response to Taxpayer Inquiry, $7,584.48, and then filed for a refund of that amount on March 6, 2009. The Division denied the refund application in full by a Notice of Disallowance, dated October 6, 2009, which incorrectly stated that the claim was for $7,581.98. The Notice of Disallowance stated that this action was taken for the following reasons:

> According to Internal Revenue Code §§ 1.164-4 [*sic*], only charges that are based on the assessed value of the real property and charged uniformly against all property under the jurisdiction of the taxing authority can be deducted as real property taxes.
>
> The items disallowed in the 2005 claim for QEZE Real Property Taxes, listed as Onon Co San Un and Cicero cons sewer #4 on the 2006 town and county tax bill for RLB Development was based on usage, not on the assessed value of the real property. The item listed as Penn Cann Light Dist on the same bill was disallowed, because it is not a county or town wide assessment.

8. In response to the 2006 personal income tax return filed by petitioners, the Division issued to them a Statement of Tax Refund, dated May 5, 2008, which indicated that the refund requested by petitioners on the return had been adjusted. The explanation for the adjustment stated as follows:

> The 2007 property tax bill for the town of Cicero and county of Onandoga [*sic*] totaling $190,565 that was submitted and included in the calculation of your real property tax credit, included an ad valorem levy in the amount of $6,272, listed on the bill as onon co san un[.]

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[2]This was the second Response to Taxpayer Inquiry issued to petitioners for this year. The earlier version incorrectly referred to 2007 rather than 2005.

> As tax credits are to be strictly construed, it is our interpretation that a special ad valorem levy or a special assessment that does not meet the federal rules for deductibility does not meet the definition of "eligible real property taxes" under subsection 15 of the tax law.
>
> Consequently, the ad valorem levy listed in your 2007 county and town real property taxes, can not be used in your calculation of the real property tax credit.

9. The Division subsequently issued to petitioners a Notice of Disallowance, undated, reflecting the disallowed amount of $6,272.00 and the following explanation:

> According to Internal Revenue Code §§ 1.164-4 [*sic*], only charges that are based on the assessed value of the real property and charged uniformly against all property under the jurisdiction of the taxing authority can be deducted as real property taxes.
>
> The item disallowed in the 2006 claim for QEZE Real Property Taxes, listed as Onon Co San Un on the 2007 town and county tax bill for the RLB Development was based on usage, not on the assessed value of the real property.

10. The Division issued to petitioners a Statement of Tax Refund, dated August 11, 2008, that adjusted petitioners' 2007 New York State personal income tax return by disallowing $1,975.00 of the real property tax credit claimed thereon for "Penn Cann Light Dist" for the stated reason that it was a special assessment and not eligible for the QEZE credit.

11. The Division subsequently sent to petitioners a Notice of Disallowance, dated September 30, 2009, that stated, in part, as follows:

> According to Internal Revenue Code §§ 1.164-4 [*sic*] special assessments are not deductible as real property taxes. The real property taxes deductible are those levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction.
>
> The item disallowed in the 2007 claim for QEZE Real Property Taxes, listed as Penn Cann light dist on the 2008 town and county tax bill for RLB Development was not levied against all property in the territory that the Town of Cicero and/or county of Onandoga [*sic*] have jurisdiction over.

12. The Division issued to petitioners a Notice of Deficiency, dated November 13, 2009, which asserted additional personal income tax in the sum of $9,152.30 plus interest. In its computation section, the notice stated:

> After further review of your 2007 New York State tax return, we have made an adjustment to your return resulting in an additional tax due.
>
> We are disallowing the amount for Onan Co San Unit on your 2008 county and town real property tax bill.
>
> Utility charges, whether based on usage or consumption or imposed as a flat charge, are fees for services rendered and do not meet the federal definition of a tax.
>
> Under federal law, a tax is an enforced contribution, exacted pursuant to legislative authority in the exercise of the taxing power, and imposed and collected for the purpose of raising revenue to be used for public or governmental purposes, and not as a payment for some special privilege granted or service rendered. Rev. Rul. 77-29, 1977-1 C.B. 44.

13. Although the Notice of Deficiency, dated November 13, 2009 was based on petitioners' inclusion of the charge for the Onondaga County Sanitary District ($9,152.30) in their claim for the QEZE tax reduction credit for 2007, said claim, contained on form IT-604 and attached to petitioners' 2007 return, does not appear to support such an assertion.

14. Petitioners attached to their claim for credit a paid tax bill for school taxes paid to the North Syracuse School District in the sum of $396,026.96 and a paid tax bill for taxes paid to the County of Onondaga/Town of Cicero in the sum of $189,710.55. The latter figure included a charge in the sum of $9,152.14 attributable to the "Onon co san un." The sum of the two bills is $585,737.51 while the claim for credit set forth on the form IT-604 was $576,585.00, or $9,152.51 less, indicating that the Onondaga County Sanitary District charge had been omitted from the claim for credit.

15. Resolution 260 of the Onondaga County Legislature created the Onondaga County Sanitary District in 1978, providing 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 benefited by an improvement in accordance with a proportionate benefit formula.[3]

16. The Penn Cann Lighting District was created by the Town of Cicero Town Board on February 27, 1978. In its resolution, the Town Board noted that all the property and property owners in the proposed district (a metes and bounds description was included in the resolution) were benefited by its creation. The Penn Cann Lighting District applied a specific rate to the taxable value of the property to arrive at the charge on the tax bill.

The Town of Cicero consolidated its lighting districts in 1992 and specifically stated in its resolution that each district would continue to be responsible for its indebtedness and the future costs of improvements would be borne by all the districts on an equitable basis.

17. No elaboration on the creation, management or operations of the Cicero Consolidated Sewer District #4 was offered by either party. However, both the Onondaga County Sanitary District and the Cicero Consolidated Sewer District charges were shown on the tax bills issued to

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[3]Official notice is taken of these facts from ***Matter of Herrick*** (Tax Appeals Tribunal, August 4, 2011). Official notice is being taken of the record of another matter before the Division of Tax Appeals pursuant to State Administrative Procedure Act § 306(4), which provides that "official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency . . . ." Courts of the State of New York may take judicial notice of their own record of the proceeding of the case before them, the records of cases involving one or more of the same parties or the records of cases involving totally different parties (***Berger v. Dynamic Imports, Inc.***, 51 Misc 2d 988, 274 NYS2d 537 [1966]; 57 NY Jur 2d, Evidence and Witnesses, § 47).

RLB Development LLC as flat rates applied to units. RLB Development LLC had a taxable value of one unit for both the Sanitary and Sewer Districts that equated to a flat charge.

SUMMARY OF THE PARTIES' POSITIONS

18. Petitioners contend that they are entitled to the credit for real property taxes paid pursuant to the provisions of Tax Law § 15, including special assessments, which they argue are "eligible real property taxes" as defined in Tax Law § 15(e). Specifically, petitioners believe that since the definition of eligible real property taxes does not exclude special assessments and ad valorem levies, they should not be excluded, particularly in light of the fact that the term "taxes imposed on real property" is not defined "anywhere." In addition, with respect to the year 2007, petitioners contend that the Notice of Deficiency, dated November 13, 2009, should be canceled since they never included the charge for the Onondaga County Sanitary District in their claim for credit.

19. Petitioners believe the legislative history of the Empire Zones Program supports a broad interpretation of the taxes eligible for inclusion in the credit since the program was developed to create tax-free qualified empire zone enterprise programs to maintain and expand employment. Petitioners argue that to allow local governments to circumvent this tax-free status by imposing special assessments would defeat the legislative intent to create a partnership with businesses where they would receive economic incentives and tax-free status in exchange for the production of employment and local investment.

20. Petitioners maintain that the definition of "eligible real property taxes" contained in Tax Law § 15(e) is unique and not subject to further elaboration by reference to the Internal Revenue Code (IRC), which is often consulted for the meaning of terms used in Article 22 that are used in a comparable context in the IRC. Since the definition of "eligible real property taxes"

in Tax Law § 15(e) does not present a term with a comparable context within the IRC, petitioners believe there is no basis for requiring conformance with the term "real property taxes" as that term is defined in the IRC or its regulations. Further, given the amendments to the definition of "eligible real property taxes" in 2002 and 2005, petitioners argue that it is clear the Legislature had ample opportunity to require that "eligible real property taxes" be deductible for federal income tax purposes or to provide that special assessments be excluded from the definition, but took no such action.

21. Petitioners contend that even if the IRC definition of real property taxes applies, special assessments and ad valorem levies are includible as eligible real property taxes because the tax is not imposed because of, and measured by, a benefit inuring directly to the properties assessed. The benefit, argue petitioners, inures to many more properties than those assessed, and thus the levies must be considered real property taxes as defined by the IRC. Likewise, petitioners argue that the provisions of the Real Property Tax Law, which contain specific definitions of the terms "tax" and "special assessment," support their conclusion that the charges in dispute are taxes since the benefits to the districts underlying the disputed charges extend beyond the districts themselves and were not levied based upon the amount of the benefit received.

22. The Division argues that the credit available to a QEZE is for eligible real property taxes only and that the definition of that term in Tax Law § 15(e) only provides that they are taxes imposed on real property, not special assessments or ad valorem taxes like the Onondaga County Sanitary District, the Penn Cann Lighting District and Cicero Sewer District #4.

23. The Division contends that since the QEZE credit is dealt with in both the personal income tax and corporation franchise tax, both of which are federally-based taxes, it is

appropriate to look to the IRC for guidance in interpreting the term real property taxes. The Division notes that under the IRC, real property taxes are those imposed on interests in real property and levied for the general welfare, but not taxes assessed against local benefits, which tend to increase the value of the property assessed. These taxes are imposed because of, and measured by, some benefit inuring directly to the property against which the tax is levied.

24. The Division maintains that the municipal resolutions creating the Onondaga County Sanitary District contained specific language that required that the costs of improvements, operations, and maintenance be borne by the properties within the district in accordance with a formula that reflected the benefits accruing to each property. As such, they were ad valorem levies or special assessments, not a real property tax as defined by the IRC, and not deductible. By operation of Tax Law § 607, they are also not a real property tax for purposes of Article 22 of the Tax Law.

25. Finally, as the agency charged with enforcement of Tax Law § 15(e), the Division contends that its interpretation should be given great weight and judicial deference, as long as its interpretation is not irrational, unreasonable or inconsistent with the governing statute.

CONCLUSIONS OF LAW

A. Chapter 63 of the Laws of 2000 amended the Tax Law to provide benefits under the Empire Zones Program Act, amending articles 9-A, 22, 32 and 33 of the Tax Law to provide new tax credits that applied to taxable years beginning on or after January 1, 2001. Tax Law § 15 allows for a credit against corporate franchise and personal income taxes for a certified QEZE for eligible real property taxes.

B. Tax Law § 15(b) provides that the amount of the credit shall be the product of the benefit period factor, the employment increase factor and the eligible real property taxes paid or

incurred by the QEZE during the taxable year. At issue here is whether charges assessed for the Sanitary Districts and Lighting District were "eligible real property taxes" as used and defined in Tax Law § 15.

C. The question presented concerns only the credit claimed by petitioners that was based on the charges for the Onondaga County Sanitary District, the Penn Cann Light District and the Cicero Consolidated Sewer District #4 and whether those levies were "eligible real property taxes" as used and defined in Tax Law § 15. That term is defined in Tax Law § 15(e) as a tax imposed on real property that is owned by the QEZE and is located in an empire zone with respect to which the QEZE is certified, and provided said taxes become a lien on the real property during the taxable year in which the owner of the real property is both certified pursuant to Article 18-B of the General Municipal Law and a QEZE.

In essence, the question is what constitutes a "tax imposed on real property." The Division contends that it is appropriate to consult the IRC and the regulations promulgated thereunder for guidance in interpreting the term. In general, a term used in Article 22 has the same meaning when used in a comparable context in the IRC (Tax Law § 607[a]). However, the Division jumps from this provision to its contention that "[r]eal property taxes are deductible under IRC § 164(a)(1)" when levied for the general public welfare, but not those taxes assessed against local benefits of a kind tending to increase the value of the property assessed (IRC § 164[c][1]; 26 CFR 1.164-2[g]; 26 CFR 1.164-4[a]). Thus, the Division concludes for purposes of its analysis herein that a tax on a local benefit cannot be a tax on real property.

The IRC section cited by the Division, IRC § 164, and the regulations thereunder, pertain to deductions from tax for real estate taxes paid. The differentiation between the types of tax that are deductible is not necessarily applicable to the case at hand because the analysis here focuses

on the broader question of what constitutes a tax on real property for purposes of the definition of "eligible real property taxes" as applied to the QEZE real property tax credit. The two areas - deductions from tax and QEZE credits - are not comparable contexts, and the meaning of terms for purposes of the IRC, although ultimately found to be the same herein, do not provide the basis for excluding special assessments from the meaning of tax on real property as used in Tax Law § 15(e).

Further clarifying the difference in contexts between the IRC and the Tax Law's QEZE provisions is petitioners' observation that the QEZE program espoused a much broader intent and purpose, i.e., economic development through incentives that create jobs and bring investment to communities that have been deemed by New York State to be economically distressed. Petitioners maintain that this program is funded by the real property tax credits afforded to businesses that agreed to partner with the State of New York to create jobs and spur investment. While these statements help crystalize the difference between the contexts, they do not explain the meaning of the term "taxes imposed on real property."

D. Although its provisions speak to the tax on real property, the Tax Law does not contain provisions specifically applicable to this area of New York law. In 1958, the Legislature codified, in a new consolidated law (the Real Property Tax Law [RPTL]), all the provisions of the Tax Law, the Education Law, the Village Law and other laws relating to the assessment and taxation of real property. Therefore, it is logical to seek guidance from the Real Property Tax Law for the meaning of a real property term used in Tax Law § 15(e). Further, it is presumed that the Legislature, in enacting the QEZE statute, was aware of the RPTL definitions pertaining to the QEZE provisions they were enacting, which the Legislature itself placed there over 40 years earlier.

> It is a general rule of statutory construction that earlier statutes are properly considered as illuminating the intent of the Legislature in passing later acts, especially where there is doubt as to how the later act should be construed, since when enacting a statute the Legislature is presumed to act with deliberation and with knowledge of the existing statutes on the same subject. (McKinney's Cons Laws of NY, Book 1, Statutes § 222.) [4]

In fact, the term "tax" is defined in Real Property Tax Law § 102(20) as "a charge imposed upon real property by or on behalf of a county, city, town, village or school district for municipal or school district purposes, but does not include a special ad valorem levy or a special assessment."

The term "special ad valorem levy" is defined in Real Property Tax Law § 102(14) as:

> [A] charge imposed upon benefited real property in the same manner and at the same time as taxes for municipal purposes to defray the cost, including operation and maintenance, of a special district improvement or service, but not including any charge imposed by or on behalf of a city or village.

The term "special assessment" is defined in the Real Property Tax Law § 102(15) as:

> [A] charge imposed upon benefitted real property *in proportion to the benefit received by such property* to defray the cost, including operation and maintenance, of a special district improvement or service or of a special improvement or service, but does not include a special ad valorem levy. (Emphasis added.)

E. The charges attributable to the Onondaga County Sanitary District, the Penn Cann Lighting District and Cicero Consolidated Sewer District #4, although levied for apparent municipal purposes, were unquestionably special assessments or ad valorem levies, as testified to by the facts in light of the Real Property Tax Law provisions above.

It has already been determined by the Tax Appeals Tribunal that the Onondaga County Sanitary District charge was an ad valorem levy and therefore not an eligible real property tax for purposes of the QEZE tax credit. (***Matter of Herrick.***)

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[4]It is noted that various particular statutes, the Tax Law and the RPTL may be considered in pari materia when they reference the same subject matter (McKinney's Cons Laws of NY, Book 1, Statutes § 221[c]).

The Penn Cann Lighting District was created by the Town of Cicero in 1978 to specifically benefit property and property owners in a specific part of the town, the benefit paid for by a pre-determined tax rate applied to the taxable value of the benefited parcel. The charge against property in the Penn Cann Lighting District defrayed the costs of operation and maintenance of the improvement or service and was thus an ad valorem levy, not an eligible real property tax for purposes of the QEZE tax credit.

The Cicero Consolidated Sewer District #4, to the extent that it can be discerned from the scant evidence produced by the parties, was established to benefit a specific area in consideration of a charge against properties in the district that were levied upon in accordance with a proportionate benefit formula. Petitioners' tax bills indicated that RLB Development LLC was assessed a flat rate applied to its number of units. RLB Development LLC had a taxable value of one unit for the Cicero Consolidated Sewer District #4 that equated to a flat charge, amounting to a special assessment. Since special assessments are excluded from the definition of tax on real property pursuant to the Real Property Tax Law definitions, it is concluded that the sewer district charges are not eligible real property taxes and the Division properly disallowed them in calculating the QEZE credit.

F. Petitioners argue that special assessments and ad valorem levies are included in the Real Property Tax Law definition of the term "tax" for purposes of levy and collection. While true, the argument is rejected for the purposes of the issue herein. First, Real Property Tax Law § 102(20) states that "the term "tax" or "taxes" as used in articles five, nine, ten and eleven of this chapter shall for levy and collection purposes include special ad valorem levies."

However, even if the Onondaga County Sanitary District charge was determined to be a special ad valorem levy, it would only be included in the term "tax" for purposes of Real

Property Tax Law § 102(20) where used in articles five, nine, ten and eleven of the chapter, i.e., those articles dealing strictly with procedural matters: assessment procedure (Article 5); levy and collection of taxes (Article 9); enforcement of collection of delinquent taxes (Article 10) (repealed); and procedures for enforcement of collection of delinquent taxes (Article 11). The language of the section is unambiguous. In all other instances, the term "tax" would not include special ad valorem levies.

G. In 2010, Tax Law § 15(e) was amended and the definition of "eligible real property taxes" was clarified. In particular, special assessments were definitively excluded from the term "tax" and, therefore, did not qualify as a real property tax for the QEZE Real Property Tax Credit.

This amendment would be very helpful if effective for the years in issue, 2004 through 2007. Unfortunately, it is determined that it is not. The amendment's effective date was set forth in detail in the Laws of 2010 (ch 57, pt R, § 18), where it provided, in part, as follows:

> This act shall take effect immediately, provided that . . . section thirteen of this act [amending Tax Law § 15(e) and clarifying the definition of eligible real property taxes for purposes of the QEZE credit] shall take effect immediately and apply to all taxable years beginning on or after January 1, 2010 and, *except with respect to maintenance and interest charges*, to all taxable years for which the statute of limitations for seeking a refund or assessing additional tax are still open (emphasis added).

Since the Onondaga County Sanitary District, the Penn Cann Lighting District and, presumably, the Cicero Consolidated Sewer District #4 provided for maintenance and interest as part of the special assessment/ad valorem levy, the retroactive effective date provided for in Laws of 2010 (ch 57, pt R, § 18) does not apply and the amendment is not applicable to the years 2004 through 2007 in this matter. However, this conclusion does not alter the rationale used or the conclusions reached above.

H. Petitioners argue that the tax imposed on property owners within the special assessment district cannot be a special assessment because the charges are not, or have not been shown to be, proportional to the benefits received. However, this argument has been raised and rejected by the courts. In ***Watergate II Apartments v. Buffalo Sewer Authority*** (46 NY2d 52, 412 NYS2d 821 [1978]), the Court of Appeals addressed the formula used to fix water charges, concluding that there need not be exact congruence between the cost of the services provided and the rates charged to particular customers. The Court noted the obvious relationship between the sewer authority's costs and the services rendered and opined that this could be viewed in two broad categories: the provision of water for current and predictable use and also supplying an essential service, which entails responsibilities of a far more complex nature. The sewer authority was obligated to look beyond meeting current usage requirements and needed to constantly plan for future development to keep pace with projected societal changes and growth. The Court concluded that the cost of these activities bore only a limited direct relationship to the volume of water utilized by a particular customer. Whereas, the Authority's function of filling the overall community needs relating to health and safety for the benefit of present and future inhabitants of the service area "may not admit of complete correlation between consumption and cost."

In ***Town of Cheektowaga v. Niagara Frontier Transportation Authority*** (82 AD2d 175, 442 NYS2d 322 [1981]), the Transportation Authority, which was exempt from real property tax and special ad valorem levies pursuant to the Real Property Tax Law, challenged its responsibility for a special assessment levy on the grounds that it was not a special assessment because a portion of the charge was based on assessed value and land area, which it claimed were not proportional to the benefit received. Citing the very reasoning of ***Watergate II Apartments***

v. Buffalo Sewer Authority noted above, the Court found the tripartite calculation of charges to be directly related to the benefit to the real property and thus constituted special assessments.

In the instant matter, the proportionate benefit to each property in the district defied an exact mathematical formula that matched the services and improvement to each property. However, as stated in ***Watergate II Apartments***, filling the overall community needs relating to health and safety for the benefit of present and future inhabitants of the service area "may not admit of complete correlation between consumption and cost." It is determined that the districts herein demonstrated that they met overlying community needs relating to health and safety, and the charges were properly considered special assessments or ad valorem levies.

I. A tax credit is a particularized species of exemption from tax (***Matter of New York Fuel Terminal Corp.***, Tax Appeals Tribunal, August 27, 1998). Petitioners herein bear the burden of establishing entitlement to the exemption, in the face of the added hurdle that statutes creating tax exemptions are construed most strongly against the taxpayer. Further, the taxpayer must show that its interpretation of the statute is the only reasonable construction (***Matter of CBS Corporation v. Tax Appeals Tribunal***, 56 AD3d 908, 867 NYS2d 270, 273 [2008], ***lv denied*** 12 NY2d 703). It is determined that petitioners have not met their burden given the rationale set forth above.

J. The Notice of Deficiency, dated November 13, 2009, concerning tax year 2007 should be canceled. The undisputed facts demonstrate that petitioners did not include the charge for the Onondaga County Sewer District in the sum of $9,152.30. The tax bills submitted for the school, county and town taxes totaled $585,737.51 while the claim for credit was only $576,585.00, or $9,152.51 less, indicating that the sewer district charge had been omitted from the claim for credit.

K. The petition of Roger L. Burdick and Shirley Burdick is granted to the extent that the Notice of Deficiency, dated November 13, 2009, is canceled, but in all other respects the petition is denied, and the Division's denials of petitioners' claims for refund for the years 2004 through 2007 are sustained.

DATED: Troy, New York
October 27, 2011

/s/ Joseph W. Pinto, Jr.
ADMINISTRATIVE LAW JUDGE