

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**CHARLES AND DIANE PISCOPO** : DECISION  
for Redetermination of a Deficiency or for Refund of New : DTA NO. 827433  
York State Personal Income Tax under Article 22 of the :  
Tax Law for the Year 2011. :

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Petitioners, Charles and Diane Piscopo,<sup>1</sup> filed an exception to the determination of the Administrative Law Judge issued on June 21, 2018. Petitioners appeared by Dean Nasca, CPA. The Division of Taxation appeared by Amanda Hiller, Esq. (Charles Fishbaum, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a letter brief in opposition. Petitioners filed a reply brief. Oral argument was not requested. The six-month period for the issuance of this decision began on October 29, 2018, the date petitioners' reply brief was received.

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

***ISSUES***

I. Whether petitioners are denied due process rights or unfairly prejudiced by the Division of Taxation's reliance upon 20 NYCRR 112.3 (c) (1) as a legal basis for determining that the lump-sum distribution is not excludable from New York taxable income for tax year 2011.

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<sup>1</sup> Petitioner Diane Piscopo's name appears herein by virtue of the fact that she and petitioner Charles Piscopo filed a joint personal income tax return for the year 2011. References to "petitioner," in the singular tense, shall mean petitioner Charles Piscopo, unless otherwise specified or required by context, since the distribution in issue was attributed to Mr. Piscopo.

II. Whether the Division of Taxation properly determined that a lump-sum distribution received by petitioner in 2011, from an Internal Revenue Code § 457 deferred compensation plan, does not qualify for the New York State pension and annuity subtraction provided for in Tax Law § 612 (c) (3) (i).

***FINDINGS OF FACT***<sup>2</sup>

We find the facts as determined by the Administrative Law Judge except for findings of fact 3, 4, 7, 9 and 11 which have been modified to more fully and accurately reflect the record. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

1. In 2011, petitioner received a lump-sum distribution of \$133,349.00 from an Internal Revenue Code (IRC) (26 USC) § 457 deferred compensation plan administered by Fascore Institutional Services (Fascore) for petitioner's employer, the City of New York (the 457 plan).

2. During his employment as a fireman with the City of New York from July 5, 1988 until he sustained a disability leading to his retirement on July 29, 2001, petitioner participated in the 457 plan that he established, opting to defer a portion of his salary pursuant to the provisions of IRC (26 USC) § 457, which governs deferred compensation plans for state and local governments.

3. Petitioner received a form 1099-R for a 2011 distribution and it was designated as a total distribution from the 457 plan in the amount of \$133,348.56 (the distribution). He was age 53 at the time of the distribution. The form 1099-R was issued by Fascore, although appearing on the form on the line directly below the line indicating that Fascore was the issuer were the

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<sup>2</sup> We note that petitioners and the Division waived a hearing, and agreed to submit the matter for determination based on documents and briefs to be submitted to the Administrative Law Judge (*see* 20 NYCRR 3000.12).

words “New York City Deferred Comp.” The electronic funds transfer (EFT) withdrawal confirmation received by petitioner regarding the distribution was issued by the Office of Labor Relations of the City of New York and does not mention Fascore.

4. Petitioner reported the distribution in the amount of \$133,349.00 (rounded up from \$133,348.56) as taxable pension on line 10 of his form IT-201, New York State resident income tax return, for 2011.

5. Petitioner claimed a New York subtraction on his 2011 return on line 26, for \$133,349.00, as a pension of New York State and local government.

6. The Division of Taxation (Division) selected petitioners’ 2011 income tax return for review and issued a statement of proposed audit changes dated October 10, 2014, with the following explanation, in pertinent part:

“We recomputed your New York taxable income.

The pension and annuity income exclusion claimed on line 26 of your return has been adjusted or disallowed.

Our records indicate that your pension and annuity income distribution from Fascore Institutional Services does not qualify as a state, local, or government pension and therefore cannot be fully excluded as a state, local or government [sic].

Distributions from Fascore Institutional Services qualify for an exclusion of up to \$20,000.00 when you are age 59½ or older at the time the distribution is received.

Your pension exclusion, for the tax year 2011, are [sic] summarized below:

Changed Item(s)	Shown on Return	Corrected exclusion	Net change
Public pensions exclusion on line 26	133,349.00	0.00	(133,349.00)”

The computational summary of tax due reflecting the corrected exclusion resulted in additional tax assessed of \$9,541.03 plus interest.

7. In correspondence dated November 3, 2014, petitioners' representative responded to the statement of proposed audit changes by indicating that he disagreed with the Division's adjustment to the 2011 return, based upon his interpretation of the instructions for line 26 of the New York State income tax return, which read as follows, in part:

"You may not subtract (1) pension payments or return of contributions that were attributable to your employment by an employer other than a New York public employer, such as a private university, and any portion attributable to contributions you make to a supplemental annuity plan which was funded through a salary reduction program, or (2) periodic distributions from government (IRC section 457) deferred compensation plans."

In the correspondence it was explained by petitioners' representative that as petitioner received a lump-sum distribution from a public employer, the exclusion should be allowed.

8. The Division responded to the petitioner's inquiry in correspondence dated January 20, 2015, as follows, in part:

"We have reviewed the information you sent in response to the assessment.

A review of our records indicates that the above assessment(s) was correctly prepared and is, therefore, sustained.

Distributions received from New York State/New York City Deferred Compensatio [sic] Plans (government section 457 plans) do not qualify as a New York State, loca [sic] governments, or federal government pension, and cannot be fully excluded on line 26 of your New York State tax return."

9. The Division issued a notice of deficiency to petitioner dated February 13, 2015, referencing the statement of proposed audit changes, assessing tax due of \$9,541.03 plus interest of \$2,253.49. The notice indicated that the notice of proposed audit adjustment set forth a "detailed computation of the additional amount due."

10. A conciliation conference was held on September 3, 2015, and the statutory notice was sustained by conciliation order CMS No. 266461, dated October 23, 2015.

11. A timely petition was filed with the Division of Tax Appeals on January 14, 2016, protesting the conciliation order. In its answer to the petition, the Division stated that in its statement of proposed audit changes it indicated, among other things, that:

“the distribution of funds received by Petitioners from Fascore International Services did not qualify for a public pension subtraction because public pension subtractions require that funds be received from a public pension plan, and Fascore International Services, the distributor of such funds, is not a public pension plan.”

12. The Division’s submission of documents in this matter included the affidavit of Debra Moseley, a Tax Technician 2 with the Division (Moseley Affidavit), whose responsibilities include reviewing and processing New York State personal income tax returns, conducting audits, resolving protests, and other such tasks, in connection with, among other programs, the pension exclusion audit program. She indicated that, after petitioners’ return for 2011 was selected for review, the Division determined that:

“. . . the [distribution] did not qualify for the public pension exclusion because Fascore is not the State of New York, its political subdivision or agency or the Federal government, and no portion of the Distribution was actually contributed to (rather than merely being deemed contributed to) by the State of New York, its political subdivisions or agency or the Federal government, as required by 20 NYCRR 112.3(c).”

13. With the submission of its brief, the Division requested that official notice be taken of three documents:

- a. The City of New York Deferred Compensation Plan/New York City Employees IRA Comprehensive Annual Financial Report for the fiscal years ended December 31, 2013 and 2014 (the annual report);
- b. the New York City Deferred Compensation Plan, Summary Guide of 457 & 401(k) Plan Provisions (summary guide);<sup>3</sup> and

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<sup>3</sup> The State Administrative Procedure Act § 306 (4) permits the taking of official notice in administrative proceedings if judicial notice could be taken. A court may only take judicial notice of particular facts if the items are of common knowledge or are determinable by referring to a source of indisputable accuracy (*Matter of Crater Club v Adirondack Park Agency*, 86 AD2d 714 [3d Dept 1982], *affd* 57 NY2d 990 [1982]). Courts today will often judicially notice matters of public record (Fisch on New York Evidence, § 1063 at 600 [2d ed]). As evidence of the

c. form IT-201-I, instructions for form IT-201, full-year resident income tax return, for tax year 2011 (instructions).<sup>4</sup>

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge began by noting that the adjusted gross income of a New York State resident is federal adjusted gross income (federal AGI) with certain modifications. The Administrative Law Judge explained that Tax Law § 612 (c) (3) (i) allows taxpayers to subtract pensions paid to public officers and employees of New York State in reaching their New York State adjusted gross income (public pension subtraction).

The Administrative Law Judge then stated that the relevant regulation, 20 NYCRR 112.3, requires that the public employer by whom the taxpayer was employed must contribute at least a portion of the pension benefits paid, in order for those benefits to qualify for the public pension subtraction. The Administrative Law Judge concluded that as there was no proof in the record that New York City had in any manner contributed to petitioner's 457 plan, the distribution did not qualify for the public pension subtraction.

The Administrative Law Judge agreed with petitioners that distributions from deferred compensation plans are currently characterized as pension or annuity income rather than deferred

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type of contractual arrangement and an accurate source of the agreement between New York City and its employees, and a matter of public record, the annual report and summary guide are officially noticed. The annual report and summary guide are officially noticed merely to provide a reference to the general information of the deferred compensation plan and the timing of when the IRC (26 USC) § 401 (a) program was added to the deferred compensation plan for New York City employees. According to the annual report, the deferred compensation plan was an umbrella program for three defined contribution plans, including an IRC (26 USC) § 401 (a) qualified pension plan component that was referred to as a savings incentive program, to which employer contributions were made. However, this addition was not made to the plan until 2007, after petitioner retired. There is no evidence in the record that any employer contributions were made to petitioner's deferred compensation plan. It is noted that the annual report submitted into evidence covers fiscal years ended December 31, 2013 and 2014, and to the extent the 401 (a) component, funded with employer contributions, was not added to the plan or available to petitioner prior to his retirement in 2001, the documents are relevant and noticed, even though the annual report and summary guide are not from 2011, the year of the distribution.

<sup>4</sup> Pursuant to the State Administrative Procedure Act § 306 (4) (*see* footnote 3), official notice of the New York State instructions for form IT-201 for 2011 is taken since it is determinable from a source of indisputable accuracy and is a matter of public record.

wages as they were in the past. However, the Administrative Law Judge determined that there remains a difference between pension income and pension income that qualifies for the public pension subtraction and, in this instance, petitioners did not prove that the distribution qualified for the public pension subtraction as further defined by 20 NYCRR 112.3.

The Administrative Law Judge also addressed petitioners' argument that the 2011 form IT-201 instructions for line 26 require that the distribution be subtracted, by concluding that as the distribution was not from a public pension, the detailed instructions for line 26 simply did not apply. Finally, the Administrative Law Judge noted that petitioner had made a mistake of law from which there is no relief.

#### ***ARGUMENTS ON EXCEPTION***

Petitioners argue that the Division's assertion that the distribution does not meet the requirements of 20 NYCRR 112.3, in particular the requirement that New York City must have actually contributed to the 457 plan for the distribution to qualify for the public pension subtraction, should be stricken from the record. Petitioners state that the Division first mentioned its reliance on 20 NYCRR 112.3 (c) in an affidavit submitted as evidence before the Administrative Law Judge. Petitioners contend that prior to that, the Division had stated its position simply as Fascore was not a public pension plan. Accordingly, petitioners initially assert that there was no rational basis for the issuance of the notice of deficiency. Petitioners also urge that the Division's reliance on 20 NYCRR 112.3 constitutes a new issue and that the Division made no motion to conform the pleadings to the evidence as required by this Tribunal's Rules of Practice and Procedure (the Rules). Furthermore, petitioners argue that this reliance constitutes an affirmative defense and, accordingly, was required to be set forth in the Division's answer to the petition.

With regard to the distribution, petitioners assert that as (1) only the City of New York appears on its EFT withdrawal confirmation statement and (2) the 1099-R issued lists both Fascore and New York City Deferred Comp., it is clear that petitioner received the distribution from the City of New York.

Thus, petitioners assert that, if the Division's only argument is that Fascore is not a public pension plan, the notice of deficiency should be canceled.

Petitioners point to IRC (26 USC) § 457 and TSB-M-02(9)I ("New York Tax Treatment of Distributions and Rollovers Relating to Government IRC Section 457 Deferred Compensation Plans" [October 17, 2003]) as requiring this Tribunal to find that the 457 plan is a pension plan, and thus that the distribution qualifies for the public pension subtraction. Furthermore, petitioners point to the 2011 instructions for line 26 of form IT-201, which state that taxpayers cannot subtract pension payments from other than New York public employers or periodic distributions from government deferred compensation plans. Petitioners argue that as petitioner received a lump-sum distribution from the City of New York, the instructions also lead to the conclusion that the distribution qualifies for the public pension subtraction.

The Division argues that the only issue is whether the City of New York contributed to the 457 plan prior the distribution to petitioner. The Division urges that this Tribunal find that there is no evidence in the record to support a finding that any public employer ever contributed to the 457 plan and that, therefore, the distribution does not qualify for the public pension subtraction and the notice of deficiency should be sustained.

The Division argues that it did not change its legal theory and thus petitioners' due process rights were not violated, nor were petitioners unfairly prejudiced. In response to several other of petitioners' arguments, the Division asserts that: (1) the Division was not required to move to



amend the pleadings in this matter; (2) the Division did not fail to raise an affirmative defense because there are no affirmative defenses at issue; and (3) the question of what entity actually paid the distribution to petitioner is not relevant to a decision in this case, as the question is whether a public employer contributed to the 457 plan.

Finally, the Division asserts that petitioners' argument that the notice of deficiency was issued without a rational basis is meritless as the Division met its burden of proving a rational basis by offering the sworn testimony that the notice of deficiency "was issued based upon a lack of sufficient information to verify the claimed public pension exclusion." The Division concludes that it was therefore petitioners' burden to present evidence to show errors in the notice of deficiency, which they failed to do.

### ***OPINION***

Initially, we address petitioners' arguments that the Division had no rational basis for the issuance of the notice of deficiency and that petitioners' due process rights under the United States and New York State Constitutions were violated by the inaction of the Division in not setting forth its reliance on 20 NYCRR 112.3 (c) until the submission of its documents to the Administrative Law Judge.

We begin by noting that "[t]he Division does not have an affirmative burden to establish the rational basis for its assessment" (*Matter of Hemrajani*, Tax Appeals Tribunal, August 19, 1993). Rather, as noted by this Tribunal in *Matter of Metzger* (Tax Appeals Tribunal, February 11, 1993) "[a] presumption of correctness attaches to an assessment issued by the Division which, in itself, provides the rational basis, so long as no evidence is introduced challenging the assessment (citations omitted)."

The notice of deficiency issued by the Division stated that it was based upon the statement of proposed audit changes. The statement of proposed audit changes, in turn, set forth, as the reason for the proposed adjustment, that “[O]ur records indicate that your pension and annuity income distribution from Fascore Institutional Services does not qualify as a state, local or government pension and therefore cannot be fully excluded as a state, local or government [sic].” The basis of the notice of deficiency was the Division’s interpretation of the statute and regulations as applied to the facts in this matter and was not based upon a traditional audit of books and records. Therefore, there was no evidence that petitioners could have introduced that would have shown that the notice of deficiency had no rational basis at the time of issuance (*see Matter of Brooklyn Navy Yard Cogeneration Partners, L.P.*, Tax Appeals Tribunal, May 9, 2006; *confirmed on other grounds* 46 AD3d 1247 [3d Dept 2007] *lv denied* 10 NY3d 706 [2008]). Accordingly, it must be found that a rational basis existed for the issuance of the notice of deficiency.

Furthermore, we conclude that petitioners were not prejudiced, nor were their rights to due process violated, by the Division’s failure to enunciate its argument that the distribution did not qualify for the public pension subtraction because New York City did not contribute to the 457 plan as required by 20 NYCRR 112.3 (c) until the Division submitted its documents to the Administrative Law Judge.

Petitioners knew from the issuance of the statement of proposed audit changes that the Division was claiming that the distribution at issue did “not qualify as a state, local, or government pension and therefore cannot be fully excluded as [such].” It was then petitioners’ burden to prove that they were entitled to the public pension subtraction by proving that it met each of the requirements set forth in Tax Law § 612 (c) (3) and the corresponding regulation 20

NYCRR 112.3 (c). This is true regardless of the arguments set forth by the Division, provided there is an opportunity to respond to the Division's arguments (*see Matter of Brooklyn Navy Yard Cogeneration Partners, L.P.* [It is a petitioner's burden to prove all elements of a claimed exemption and, as long as the petitioner has an opportunity to prepare for and address all of the Division's arguments, there is no denial of due process.]])

This Tribunal does not condone the Division's refusal to address petitioners' arguments set forth in their response to the statement of proposed audit changes or petition, nor can we explain the Division's refusal to mention any statute in support of its position or even its own regulation in support of its notice of deficiency until the submission of documents to the Administrative Law Judge. However, petitioners did have an opportunity to respond to such arguments, and indeed did so in their arguments submitted to the Administrative Law Judge.

With regard to petitioners' additional arguments, we find that the Division's reliance on 20 NYCRR 112.3 (c) as set forth in its submission to the Administrative Law Judge presented neither a new issue nor an affirmative defense. We agree with the Administrative Law Judge that the Division thus presented only a new argument, which was not required to be set forth in the Division's answer, nor did it require an amendment to the pleadings.

Finally, the question remains as to whether the distribution at issue qualifies for the public pension subtraction provided for in Tax Law § 612 (c) (3) (i).

Article XVI, § 5 of the New York State Constitution provides that “[a]ll salaries, wages and other compensation, except pensions, paid to officers and employees of the state and its subdivisions and agencies shall be subject to taxation.” In accordance with this constitutional provision, and as relevant hereto, Tax Law § 612 (c) (3) (i) allows for the calculation of New York adjusted gross income by reducing federal adjusted gross income by the amount of

pensions paid to employees of New York State and its subdivisions to the extent that such income was included in federal adjusted gross income.<sup>4</sup> The allowable reduction is further defined by regulation as only applicable to pensions and other retirement benefits that relate to services performed as a public employee and only where the benefit in question was actually contributed to, at least in part, by the State or its political subdivisions (20 NYCRR 112.3 [c] [1]).

In determining whether the distribution fits into the constitutional, statutory and regulatory scheme set forth above, we note that the public pension subtraction is a type of tax exemption and, therefore, the rules of construction pertaining to exemptions are applicable (*Matter of Langlan*, Tax Appeals Tribunal, September 7, 1997). Exemption statutes must be strictly construed against the taxpayer (*see e.g. Matter of 677 New Loudon Corp. v State of N.Y. Tax Appeals Trib.*, 19 NY3d 1058 [2012], *rearg denied* 20 NY3d 1024 [2013] *cert denied* 571 US 952 [2013]). Moreover, petitioners must prove that the Division's interpretation herein is irrational and that their interpretation of the statute is the only reasonable construction (*see Matter of Brooklyn Navy Yard Cogeneration Partners, L.P.*). Nevertheless, construction of an exemption statute should not be so narrow as to defeat the provision's settled purpose (*Matter of Grace*, 37 NY2d 193, 196 [1975], *rearg denied* 37 NY2d 816 [1975], *lv denied* 338 NE2d 330 [1975]).

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<sup>4</sup> Tax Law § 612 (c) (3-a) provides for a separate modification for a pension or annuity not in excess of \$20,000.00, received by an individual who has attained the age of 59 ½ and is not otherwise excluded as a New York State or federal pension. This exclusion is not in issue, but is referenced in the Division's statement of proposed audit changes. Although the Division indicated that the distribution from petitioner's deferred compensation plan would otherwise qualify for this exclusion, petitioner had not yet attained age 59 ½ when he received it. Thus, it has no applicability to this matter.

As there is no doubt that petitioner had been a New York City employee, the only issue is whether the distribution was at least partially contributed to by New York City as required by 20 NYCRR 112.3 (c). Petitioners have neither argued that New York City contributed to the 457 plan nor presented any evidence that New York City contributed in any manner to the 457 plan. Rather, petitioners argue that IRC (26 USC) § 457 and TSB-M-02(9)I require the conclusion that petitioner's 457 plan is a pension plan and thus the public pension subtraction must be allowed. However, both 20 NYCRR 112.3 (c) and the technical services bulletin cited by petitioners make clear that there is a difference between a pension plan distribution eligible for a \$20,000.00 subtraction under Tax Law § 612 (c) (3-a) and a public pension eligible for a total subtraction under Tax Law § 612 (c) (3) (i). TSB-M-02(9)I explains that amendments to the IRC changed "the characterization of distributions from government section 457 deferred compensation plans" from wages to "pension or annuity payments." The bulletin goes on to explain the impact of this change by stating that for tax years beginning on or after January 1, 2002, distributions under a government deferred compensation plan would be qualified for the partial subtraction from federal adjusted gross income provided for under Tax Law § 612 (c) (3-a), thereby implying that such distributions would not be qualified for the total subtraction provided for by Tax Law § 612 (c) (3). Thus, TSB-M-02(9)I, contrary to petitioners' arguments, provides support for the Division's position.

Petitioners' arguments with regard to the instructions for filing the 2011 New York State tax returns are also not helpful to petitioners. The instructions for line 26 begin by asking: "[D]id you receive a pension or other distribution from a NYS or local government pension plan or federal government pension plan? If No, go to line 27." The Administrative Law Judge found, and the Division argues on exception, that petitioner did not receive a distribution from a

government pension plan, as the 457 plan did not qualify as such. Thus, petitioners' inquiry regarding line 26 should have ended. Petitioners, however, continued to read the instructions and believed that they were entitled to the public pension subtraction based upon the wording of a note on what may not be subtracted, which included: "periodic distributions from government (IRC section 457) deferred compensation plans. However, these payments and distributions may qualify for the pension and annuity income exclusion described in the instructions for line 29." Thus, this instruction is consistent with TSB-M-02(9)(I). We agree with petitioners that the instructions are confusing in that there is an implication that a taxpayer could subtract a lump-sum distribution from a 457 plan. However, the constitutional, statutory and regulatory scheme providing for the public pension subtraction is not superceded by tax form instructions, much less unclear instructions.

Pursuant to the above discussion, we find that petitioners have not shown that their interpretation of the public pension subtraction is a reasonable interpretation, much less that it is the only reasonable interpretation. The distribution does not qualify for the public pension subtraction because the 457 plan was not contributed to by New York City in any part as required by the regulations.

While not mentioned by either party, we would be remiss not to address the decision of the Tribunal in *Matter of Langlan*, Tax Appeals Tribunal, September 7, 1997, a case dealing with a similar issue. In *Matter of Langlan*, the Tribunal invalidated a portion of 20 NYCRR former 116.3 (c) (1), which dealt with the public pension subtraction. The regulation limited the public pension subtraction to pensions paid by a "New York State or municipal retirement system plan" (*id.*). The Tribunal found that the plain language of Tax Law § 612 (c) (3) (i) did not specifically limit the public pension subtraction to public pensions actually "paid by a New York State or

municipal retirement system” (*id.*). The Tribunal concluded that the attempted addition of such a requirement was “out of harmony with the statute” and invalidated that portion of the regulation (*id.*).

The argument could be made that the same reasoning should apply here, as the language of Tax Law § 612 (c) (3) (i) does not limit the public pension subtraction to instances where a public entity actually contributed to a pension. However, based upon this Tribunal’s interpretation of *Matter of Langlan*, we find that the portion of the current regulation at issue in this matter, the requirement that a pension be contributed to by a public employer in order to qualify for the public pension subtraction, is in harmony with the statute. 20 NYCRR 112.3 (c) does not add a requirement to Tax Law § 612 (c) (3) (i), but merely defines pension, as the word is used in the statute, to mean those pensions that are contributed to by public employers. We agree with the Administrative Law Judge that a regulation that further defines the type of pension that qualifies as a public pension is clearly within the authority of the Division to adopt and enforce (*see* Tax Law § 697 [a]). Additionally based upon *Matter of Langlan*, we have not addressed petitioners’ arguments regarding what entity actually paid the distribution.

Accordingly it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Charles and Diane Piscopo is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Charles and Diane Piscopo is denied; and
4. The notice of deficiency dated February 13, 2015 is sustained.

DATED: Albany, New York  
April 29, 2019

s/ Roberta Moseley Nero  
Roberta Moseley Nero  
President

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

/s/ Anthony Giardina  
Anthony Giardina  
Commissioner