

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition  
of  
**JOHN F. AND KRISTIN W. SOMERS**  
for Redetermination of a Deficiency or for Refund of  
New York State Personal Income Tax under Article 22  
of the Tax Law for the Years 2016 and 2018.

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DETERMINATION  
DTA NO. 830034

Petitioners, John F. and Kristin W. Somers, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the years 2016 and 2018.

On May 1, 2023 and May 8, 2023, respectively, petitioners, appearing by Barclay Damon LLP (David G. Burch, Jr., Esq., of counsel), and the Division of Taxation, appearing by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel), waived a hearing and submitted this matter for determination based upon documents and briefs to be submitted by November 16, 2023, which date commenced the six-month period for the issuance of this determination. After due consideration of the documents and arguments submitted, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether, for purposes of computing the Qualified Empire Zone Enterprise (QEZE) tax reduction credit under Tax Law § 16 for resident shareholders of a New York S corporation, the Division of Taxation properly multiplied the S corporation's business apportionment factor by petitioners' income from the S corporation in calculating the tax factor component of such credit.

### ***FINDINGS OF FACTS***

Petitioners, John F. and Kristen W. Somers, and the Division of Taxation (Division) entered into a stipulation of facts, dated October 20, 2022, and June 21, 2023, respectively, in connection with this matter. Such stipulated facts have been substantially incorporated into the findings of fact set forth herein.

1. Harmac Medical Products, Inc. (Harmac), is a full-service contract manufacturer of single-use medical devices, with its headquarters based in Buffalo, New York. Harmac has served the global marketplace for over 35 years.

2. Harmac is a company that specializes in the manufacture of plastic products and precision molded medical devices. Harmac ships its manufactured products throughout the United States and in many countries outside the United States.

3. Harmac is a New York corporation that elected to be taxed under subchapter S of the Internal Revenue Code (IRC).

4. Harmac is certified in the City of Buffalo Empire Zones Program with an effective eligibility date of December 7, 2009.

5. During tax years 2016 and 2018, all of Harmac's assets located within the United States were situated in New York State at empire zone locations.

6. During tax years 2016 and 2018, all of Harmac's United States employees performed their work at New York State empire zone locations.

7. All of Harmac's United States manufacturing operations took place in New York State at empire zone locations during the years at issue.

8. The corporate tax returns for Harmac for the 2016 and 2018 tax years were prepared by Freed Maxick Certified Public Accountants, P.C. and included the form 1120S US income tax

return for an S corporation (form 1120S), and the CT-3-S New York S corporation franchise tax return (CT-3-S return). As part of its CT-3-S returns filed for 2016 and 2018, Harmac claimed certain empire zone credits.

9. Petitioner, John F. Somers, is the president and chief executive officer (CEO) of Harmac.

10. Petitioners filed joint forms IT-201, New York State resident income tax returns (personal income tax returns) for 2016 and 2018. Petitioners claimed empire zone credits, including the QEZE tax reduction credit on their 2016 and 2018 personal income tax returns.

11. As reported on schedule K-1 of form 1120S and schedule B of the CT-34-SH, New York S corporation shareholders' information schedule, attached to and made part of the CT-3-S return, John F. Somers owned 37.9423% of the stock of Harmac in 2016 and 2018.

12. As shown on the form CT-604, claim for QEZE tax reduction credit (form CT-604), filed with Harmac's 2016 CT-3-S return, all the employees of Harmac working at its New York locations were situated at empire zone locations in 2016.

13. As shown on the form CT-604 filed with Harmac's 2016 CT-3-S return, all Harmac's New York assets were situated at empire zone locations in 2016. Accordingly, the zone allocation factor was calculated as 1.0 or 100% for 2016.

14. The 2016 form CT-604, claim for QEZE tax reduction credit (form CT-604-2016), reported the following factors for the calculation of the QEZE tax reduction credit:

(a) schedule J of the form CT-604-2016 calculated the employment increase factor of 1.0 based upon the creation of more than 100 jobs in the 2016 tax year over the test year employment number,

(b) schedule K of form CT-604-2016 calculated the zone allocation factor of 1.0, and

(c) schedule L of the form CT-604-2016 reported the benefit period factor of 1.0 based upon the tax year being the 8th year of the business tax benefit period.

15. As shown on the form CT-604 filed with Harmac's 2018 CT-3-S return, all the employees of Harmac working at its New York locations were situated at empire zone locations in 2018.

16. As shown on the form CT-604 filed with Harmac's 2018 CT-3-S return, all Harmac's New York assets were situated at empire zone locations in 2018. Accordingly, the zone allocation factor was calculated as 1.0 or 100% for 2018.

17. The 2018 CT-3-S return filed for Harmac included the form CT-604, claim for QEZE tax reduction credit (form CT-604-2018), that reported the following factors for the calculation of the tax reduction credit:

(a) schedule J of the form CT-604-2018 calculated the employment increase factor of 0.89 based upon the creation of 89 jobs in the 2018 tax year over the test year employment number,

(b) schedule K of the form CT-604-2018 calculated the zone allocation factor of 1.0, and

(c) schedule L of the form CT-604-2018 reported a benefit period factor of 1.0 based upon the tax year being the 10th year of the business tax benefit period.

18. Harmac provided Mr. Somers with his federal schedules K-1 for the 2016 and 2018 tax years, reporting the amount of ordinary income, interest income, ordinary dividends and other income allocated to Mr. Somers based upon his percentage of stock ownership.

19. Harmac provided Mr. Somers with his New York schedule K-1 equivalents for the 2016 and 2018 tax years reporting the benefit period factor, the employment increase factor and the zone allocation factor to be used in the calculation of petitioners' QEZE tax reduction credit

to be claimed on their New York State income tax returns, and also reporting any additions or subtractions to the federal income allocation based upon New York State tax laws.

20. The information provided on the federal and New York State schedules K-1 was used by petitioners to calculate the QEZE tax reduction credit claimed on their personal income tax returns for 2016 and 2018.

21. The business allocation percentage (BAP)<sup>1</sup> reported by Harmac on its CT-3-S returns was 2.3128% for tax year 2016 and 2.2303% for tax year 2018.

22. The business allocation percentages are not provided by Harmac to its shareholders on either the federal schedule K-1 or the New York schedule K-1 equivalent.

23. Under schedule N of their form IT-604-2016, petitioners calculated the tax factor component of the QEZE tax reduction credit. The resulting tax factor was \$85,743.00.

24. Under schedule N of their form IT-604-2018, petitioners calculated the tax factor component of the QEZE tax reduction credit. The resulting tax factor was \$56,786.00.

25. Line 54 of the form IT-604 states: “[e]nter the amount of your income from the QEZE allocated within NYS (*see instructions*).” The instructions for Line 54 specific to shareholders of New York S corporations that are QEZEs, as set forth on the IT-604-I, state:

“[t]his 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. This amount should be provided to you by the New York S corporation.”

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<sup>1</sup> The parties used business allocation percentage in the stipulated facts. However, beginning in 2015, the correct term is business apportionment factor (*see* Tax Law § 210-A [as added by L 2014, ch 59 part A, § 16, eff. January 1, 2015, as amended L 2015, ch 59 part T §§ 21 to 30-a, eff. April 19, 2015, deemed eff. January 1, 2015; L 2016, ch 60 part P § 4, eff. April 13, 2016, deemed eff. January 1, 2015]).

26. All of the income reported on line 54 of the form IT-604 that petitioners filed for tax years 2016 and 2018 was income from Harmac and included in their NY adjusted gross income reported for tax years 2016 and 2018.

27. Petitioners calculated their QEZE tax reduction credit for the 2016 and 2018 tax years in schedule O on each individual form IT-604 as the product of their tax factor on line 57, and (i) the benefit period factor, (ii) the employment increase factor, and (iii) the zone allocation factor as provided by Harmac. The resulting QEZE tax reduction credit was \$85,743.00 for tax year 2016 and \$50,540.00 for tax year 2018.

28. The Division conducted audit reviews of petitioners' personal income tax returns for tax years 2016 and 2018 and the QEZE credits claimed on the same. It verified and accepted all credits claimed by petitioners on their personal income tax returns for tax years 2016 and 2018, except the claimed QEZE tax reduction credit. The Division reviewed information provided by petitioners including Harmac's income and the allocation of income to New York State. Based upon its review of that information, the Division determined that petitioners did not apply Harmac's BAP to allocate their share of Harmac's income to New York State when they computed the tax factor of the QEZE tax reduction credit reported on their forms IT-604 for tax years 2016 and 2018.

29. As noted above, petitioners claimed a QEZE tax reduction credit in the amount of \$85,743.00 for tax year 2016. The Division applied Harmac's BAP of 2.3128% to their share of Harmac's income, determined their tax factor to be \$1,983.00 and recomputed their QEZE tax reduction credit to be \$1,983.00 for tax year 2016.

30. Correspondence from the Division, dated June 23, 2020, addressed to petitioners, and referencing assessment L-051439490-7 for the tax year 2016 indicated that due to the Tax

Appeals Tribunal (Tribunal) “Decision DTA NO. 825436,”<sup>2</sup> Harmac’s reported BAP for 2016 would be used to reduce the QEZE income included in the calculation of the QEZE tax reduction credit, reducing the petitioners’ claimed QEZE tax reduction credit from \$85,743.00 to \$1,983.00.

31. On June 24, 2020, the Division issued to petitioners notice of deficiency, L-051439490, asserting tax due in the amount of \$83,760.00 and accrued interest in the amount of \$23,114.00, for tax year 2016.

32. As noted above, petitioners claimed a QEZE tax reduction credit in the amount of \$50,540.00 for tax year 2018. The Division applied the same action to the 2018 tax year, applying Harmac’s reported BAP of 2.2303% to their share of Harmac’s income, determined their tax factor to be \$7,416.00 and recomputed their QEZE tax reduction credit to be \$6,600.00 for tax year 2018.

33. On July 29, 2020, the Division issued to petitioners notice of deficiency, L-051515830, asserting tax due in the amount of \$43,940.00 and accrued interest in the amount of \$4,556.00, for tax year 2018.

34. The application of Harmac’s business allocation factor<sup>3</sup> to the calculation of the claimed QEZE tax reduction credit was the only adjustment made by the Division to petitioners’ personal income tax returns for tax years 2016 and 2018.

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<sup>2</sup> The Tribunal decision referenced by the Division is *Matter of Purcell*, Tax Appeals Tribunal, November 14, 2016.

<sup>3</sup> Paragraph 19 of the stipulated facts incorrectly uses business allocation factor. Business allocation percentage is used in other stipulated facts. However, beginning in tax year 2015, business apportionment factor is the correct term (*see* footnote 1).

35. Tax Law § 16 provides that the QEZE tax reduction credit is equal to “the product of (i) the benefit period factor, (ii) the employment increase factor, (iii) the zone allocation factor and (iv) the tax factor.”

36. Pursuant to the instructions set forth on pages 2 and 3 of the CT-604-I (2016), a New York S corporation qualifying for a QEZE tax reduction credit is required to provide each shareholder with the three factors including (i) the benefit period factor, (ii) the employment increase factor, and (iii) the zone allocation factor. The fourth factor, the tax factor, is computed by the shareholders on form IT-604 which is filed with their personal income tax returns.

37. Pursuant to page 5 of the IT-604-I (2016), shareholders of New York S corporations that are QEZEs determine the tax factor using 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. It further states that the income allocable to New York State is the QEZE S corporation’s income from New York State sources. This amount is provided to the shareholders by the New York S corporation.

38. Form CT-604 does not request or report the amount of sales of New York tangible personal property, nor does it request or report the amount of sales of tangible personal property outside of New York.

39. Form CT-604 does not request or report the BAP, nor does it require that this information be provided to the shareholders as part of the information for the calculation of the QEZE tax reduction credit.

40. The BAP for the 2016 and 2018 tax years as reported on Harmac’s CT-3-S return 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.

41. On audit, the Division applied Harmac's BAP as a component of the tax factor calculation, and thereby reduced petitioners' QEZE tax reduction credit by \$83,760.00 in tax year 2016 and by \$43,940.00 in tax year 2018.

### ***CONCLUSIONS OF LAW***

A. In 1986, the legislature enacted New York's Economic Development Zones (the EDZ Program). The purpose of the program was to stimulate private investment, private business development, and job creation in targeted geographic areas characterized by persistent poverty, high unemployment, shrinking tax bases and dependence upon public assistance (*see* General Municipal Law § 956). The EDZ Program offered a variety of state tax incentives designed to attract new businesses to the state and to enable existing businesses to expand and create more jobs (*see id.*). Over time, the EDZ Program gradually shifted its focus from poverty reduction to business development by relaxing eligibility requirements, and the program was changed to the Empire Zones Program Act in May of 2000 (L. 2000, ch. 63, part GG).

B. Businesses located in qualifying empire zone areas and that otherwise meet the statute's criteria could apply to the Department of Economic Development for a certificate of eligibility that they could then submit to the Department of Taxation and Finance in support of their claim for tax credits. These businesses are also referred to as QEZEs (*see* General Municipal Law § 959 [a]). As a certified QEZE, Harmac was eligible to receive certain tax benefits available to such certified business enterprises (*id.*).<sup>4</sup> One of the benefits, the QEZE tax

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<sup>4</sup> Although the empire zone 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 QEZE tax reduction credit for the remainder of its benefit period, so long as it meets the relevant eligibility requirements.

reduction credit, provides for a credit against 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]).

C. This matter concerns petitioners' entitlement to the QEZE tax reduction credits that they claimed for the tax years 2016 and 2018 as pass-throughs from Harmac, a New York corporation that elected to be treated as an S corporation for federal and state tax purposes. As such, its income and any applicable QEZE tax reduction credits pass through to its shareholders, including petitioner John F. Somers, the owner of 37.9423% of Harmac's stock in tax years 2016 and 2018. As a shareholder of Harmac, Mr. Somers claimed empire zone credits, including the QEZE tax reduction credit on the New York personal income tax returns, that petitioners jointly filed for 2016 and 2018. On their returns filed for 2016 and 2018, petitioners claimed, among other credits, the QEZE tax reduction credit in the amounts of \$85,743.00 and \$50,540.00, respectively.

D. Tax Law § 16 (b) provides that the amount of the QEZE tax reduction credit "shall be the product of (i) the benefit period factor, (ii) the employment increase factor, (iii) the zone allocation factor and (iv) the tax factor." Where, as here, the QEZE is a New York S corporation and the tax reduction credit claimant is an S corporation shareholder, Tax Law § 16 (f) (2) (C) describes the tax factor calculation 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 amount determined in paragraph one of this subdivision 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.”

E. Tax Law § 16 (f) (1) states in relevant part that, “The tax factor shall be, in the case of article twenty-two of this chapter, the tax determined for the taxable year under subsections (a) through (d) of section six hundred one of such article.”

F. The present matter concerns only the proper calculation of the tax factor component of the QEZE tax reduction credits that petitioners claimed for 2016 and 2018. Petitioners contend that the Division incorrectly applied Harmac’s BAP in the calculation of the tax factor component of the QEZE tax reduction credits claimed for 2016 and 2018. They assert that the tax factor formula in Tax Law § 16 makes no reference to the BAP. Petitioners maintain that, as New York residents, all their income from Harmac is subject to New York personal income tax. Petitioners claim that they included all of their share of income from Harmac in the calculation of their QEZE tax reduction credits pursuant to Tax Law § 16. They contend that the Division’s use of Harmac’s BAP in the calculation of the tax factor as a means of allocating income within New York State does not result in “providing an apportionment which reasonably reflects the portion of the shareholder’s tax attributable to the income of the qualified empire zone enterprise” (Tax Law § 16 [f] [2] [C]).

Petitioners argue that the Division misconstrued the holding 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]), to mean that an S corporation’s BAP must be included as a factor in the calculation of the QEZE tax reduction credit. They claim that the facts in *Purcell* are starkly different from those in the present matter, and the Division failed to recognize the distinctions that render the application of the BAP to petitioners’ tax factor improper. Specifically, petitioners note that the S corporation in *Purcell* received substantial income from

construction projects in Virginia. In contrast, petitioners assert that all assets and employees of Harmac are situated within New York, and all income during tax years 2016 and 2018 was earned from economic activity in New York State. Petitioners maintain that Harmac's reported BAP of 2.3128% and 2.2303% for tax years 2016 and 2018, respectively, reflects the sales and shipments of products to out-of-state purchasers. Petitioners also note that, while the taxpayers in *Purcell* claimed resident tax credits equal to the amount of income tax paid to Virginia, they received no resident tax credits based upon the income of Harmac. Given these differences, petitioners contend that, although the use of the BAP to limit the QEZE tax reduction credit was appropriate in *Purcell*, it is not appropriate here. Petitioners also contend that the Division's application of the BAP in all cases is inconsistent with the language of Tax Law § 16. They argue that the tax factor provision contains no requirement to exclude tax on income from sales outside New York and does not require the application of the BAP. Petitioners assert that the tax factor provision looks to the shareholder's and not the S corporation's portion of income that is allocated to New York. They maintain that, as New York residents, all their income from Harmac is subject to New York income tax. As such, petitioners argue that their QEZE tax reduction credits for tax years 2016 and 2018 should be based upon all their income from the S corporation, not their share of the S corporation's income multiplied by the S corporation's BAP, as advanced by the Division.

Petitioners contend that the Division's application of the BAP in the calculation of the tax factor undermines the express public policy of the empire zone program to encourage businesses to create employment and to invest in economically depressed areas. They assert that the goal of the QEZE tax reduction credit was to potentially eliminate all tax liability generated by the business. Petitioners argue that contrary to that policy and goal, the Division's use of the BAP as

an allocation methodology in the instant case results in a QEZE tax reduction credit that is not consistent with the income from Harmac and is in clear violation of Tax Law § 16.

G. The Division contends that it properly applied the holding in *Purcell* to the present matter. It further contends that the holding in *Purcell* requires an S corporation shareholder's QEZE tax reduction credit calculation to use the S corporation's BAP in computing the tax factor. The Division argues that *Purcell* is not limited to the circumstances of that case. It also asserts that, although referenced in *Purcell*, the claim of a resident tax credit is not relevant in computing the QEZE tax reduction credit. The Division maintains its application of the BAP in this matter in calculating the QEZE tax reduction credit is not contrary to the legislative intent of the empire zone program.

H. The Third Department's recent decision in *Matter of Goldstein v New York State Tax Appeals Trib.* (222 AD3d 1308 [3d Dept 2023]) addressed the issue of whether the application of the BAP applies where the S corporation's operations are exclusively in New York. In *Goldstein*, during the 2014 tax year, Mr. and Mrs. Goldstein were 50% owners of the stock, directly and through trusts, of B&H Foto & Electronic Corporation (B&H Foto), a New York corporation.<sup>5</sup> B&H Foto is an S corporation that sells professional photography and videography equipment as well as other electronics. B&H Foto was a certified QEZE since March 2002. In addition to the goods B&H Foto sells in New York, it derives significant income from other states and countries by way of mail and online orders shipped outside the state. During the 2014 tax year, Mr. and Mrs. Goldstein claimed a QEZE tax reduction credit on their personal income tax return. They calculated their QEZE tax reduction credit based upon all of B&H Foto's

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<sup>5</sup> During the tax year 2014, Herman and Blimie Schreiber owned the remaining 50% of B&H Foto and the decision in *Matter of Schreiber v New York State Tax Appeals Trib.* (222 AD3d 1303 [3d Dept 2023]) addressed the identical issues.

taxable income, including income from sales that were shipped out-of-state. Thereafter, the Division audited Mr. and Mrs. Goldstein's 2014 personal income tax return and sent them an account adjustment notice, determining that their QEZE tax reduction credit was improperly calculated by failing to exclude income attributable to B&H Foto's out-of-state sales when calculating the tax factor because this income was not "allocated within the state" as required by Tax Law § 16 (f) (2) (C). In determining the portion of B&H Foto's income that was allocated within the state, the Division applied B&H Foto's BAP as a component of Mr. and Mrs. Goldstein's tax factor calculation and reduced Mr. and Mrs. Goldstein's claimed QEZE tax reduction credit. As a result of its reduction in Mr. and Mrs. Goldstein's QEZE tax reduction credit, the Division reduced their claimed refund. In March 2019, Mr. and Mrs. Goldstein filed a petition with the Division of Tax Appeals seeking a refund of personal income tax in the amount of the downward adjustment to their QEZE tax reduction credit. The Division moved for summary determination that was granted by an administrative law judge (ALJ) who found that the Division properly factored in the BAP when determining the tax factor relevant to the taxpayers' QEZE tax reduction credit. In reaching this conclusion, the ALJ determined that the decision in *Purcell* was controlling, and that the Division's downward adjustment was consistent with the holding of *Purcell*. Mr. and Mrs. Goldstein filed an exception to the ALJ's determination arguing that the Division and, by extension, the ALJ misapplied the holding in *Purcell* in adopting the view that the BAP is required to be considered in all situations. In this respect, Mr. and Mrs. Goldstein contended that statutes pertaining to the QEZE tax reduction credit do not mention the BAP being part of the tax factor calculations and that the Division is not applying the relevant statutes properly. The Tribunal affirmed the ALJ's determination, finding that the ALJ properly applied *Purcell*. The Tribunal therefore determined that the ALJ

properly granted the Division's motion for summary determination because there existed no issue of material fact. Mr. and Mrs. Goldstein subsequently initiated the proceeding challenging the Tribunal's determination.

The court noted that the issue in the *Goldstein* distilled to whether it was rational for the Tribunal to rely on *Purcell* in interpreting Tax Law § 16 (f) (2) (C) to require the application of the BAP to determine what portion of B&H Foto's income was "allocated within the state" for purposes of calculating Mr. and Mrs. Goldstein's QEZE tax reduction credit (*Matter of Goldstein v New York State Tax Appeals Trib.*, 222 AD3d at 1310). The court noted that in *Purcell*, it addressed the question of "whether the phrase 'allocated within the state' requires that the income taxes attributable to a New York S corporation's out-of-state income be excluded when calculating a resident shareholder's QEZE tax reduction credit" (*id.* at 1311, citing *Matter of Purcell v New York State Tax Appeals Trib.*, 167 AD3d at 1102-1103). In *Goldstein*, the court further noted that, in *Purcell*, it found that "it is rational to interpret Tax Law § 16 (f) to require similar allocation of a New York S corporation's income for resident shareholders based upon the BAP reported by the corporation" (*Matter of Goldstein v New York State Tax Appeals Trib.*, 222 AD3d at 1311, citing *Matter of Purcell v New York State Tax Appeals Trib.*, 167 AD3d at 1105). However, the court found in *Goldstein* that the use of the BAP leads to an irrational result given that B&H Foto, during the tax year at issue, did not have any out-of-state operations (*see Matter of Goldstein v New York State Tax Appeals Trib.*, 222 AD3d at 1311). The court also found that reducing Mr. and Mrs. Goldstein's QEZE tax reduction credit based on the BAP runs afoul of the purposes of the QEZE tax reduction credit (*see id.* at 1312). The court briefly examined how the BAP was calculated and found it to be further evidence of irrationality (*id.*). The court held that the Tribunal's interpretation of Tax Law § 16 (f) (2) (C) and *Purcell* as

requiring the usage of the BAP when calculating the tax factor for the QEZE tax reduction credit was irrational and that Mr. and Mrs. Goldstein had proven “an unambiguous entitlement thereto, showing that the proffered interpretation of the statute is not only plausible, but also that it is the only reasonable construction” (*Id.* at 1312-1313, citing *Matter of Suozzi v Tax Appeals Trib.*, 179 AD3d 1253, 1255 [3d Dept 2020] [internal quotations and citations omitted]).

I. It is noted that in *Matter of Schreiber v New York State Tax Appeals Trib.* (222 AD3d 1303), the court addressed the identical issue as presented in *Goldstein* and reached the same holding as set forth in *Goldstein* (*see Matter of Schreiber v New York State Tax Appeals Trib.*, 222 AD3d at 1305-1308).

J. In the instant matter, the Division applied Harmac’s BAP in the calculation of the tax factor calculation of petitioners’ QEZE tax reduction credits for tax years 2016 and 2018 and thereby reduced their claimed QEZE tax reduction credit by \$83,760.00 in tax year 2016 and by \$43,940.00 in tax year 2018. Given the holdings in *Goldstein* and *Schreiber*, it is determined that the Division’s use of Harmac’s BAP when calculating the tax factor of the QEZE tax reduction credit is irrational and unreasonable. “As such, petitioners have proven ‘an unambiguous entitlement thereto, showing that the proffered interpretation of the statute is not only plausible, but also that it is the only reasonable construction’” (*see Matter of Goldstein v New York State Tax Appeals Trib.*, 222 AD3d at 1312-1313 [internal citations omitted]; *see also Matter of Schreiber v New York State Tax Appeals Trib.*, 222 AD3d at 1307-1308 [internal citations omitted]). As such, petitioners properly computed the tax factor component of the QEZE tax reduction credit to be \$85,743.00 and \$56,786.00 for tax years 2016 and 2018, respectively. The Division is directed to reverse its downward adjustments of the QEZE tax



reduction credit for tax years 2016 and 2018 and refund any overpayment of tax based upon the increased QEZE tax reduction credits for such years.

K. The petition of John F. and Kristen W. Somers is granted, the notices of deficiency, dated June 24, 2020, and July 29, 2020, for the years 2016 and 2018, respectively, are cancelled and the Division of Taxation is directed to refund any overpayment of tax, in accordance with conclusion of law J.

DATED: Albany, New York  
May 16, 2024

/s/ Winifred M. Maloney  
ADMINISTRATIVE LAW JUDGE