

# **Bond Case Briefs**

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## **TAX - NEW YORK**

### **Piccolo v. New York State Tax Appeals Tribunal**

**Supreme Court, Appellate Division, Third Department, New York - May 2, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 03137**

Taxpayer owned property in a Qualified Empire Zone Enterprise and claimed QEZE credits for a downtown improvement tax it paid.

Taxing authorities acknowledged that taxpayer was entitled to claim QEZE credits for “eligible real property taxes” but did not agree with taxpayer that the downtown improvement tax falls within the definition of that phrase. To resolve the issue, the court set out to determine whether the quoted phrase includes special ad valorem levies and special assessments in addition to traditional taxes and, if not, whether the downtown improvement tax is actually a tax as opposed to an ad valorem levy or special assessment.

The court began its analysis by stating that statutes creating exemptions must be strictly construed against the taxpayer and, if ambiguity arises, against the exemption. Under this standard, taxpayer had not met its burden of establishing that the term “eligible real property taxes” in Tax Law § 15(e) includes an exemption from ad valorem levies or special assessments. Under the same standard, taxpayer had not met its burden of proving that the tax exemption under Tax Law § 15(e) applied to the downtown improvement tax.

The court concluded that, despite its label as such, the downtown improvement tax was not actually a tax. It was irrelevant whether that charge was actually a special assessment or ad valorem levy, as both are excluded from the definition of tax. Taxpayer failed to meet its burden of proving its entitlement to the QEZE credit for the downtown improvement tax.