

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12740
C/nl

_____AD3d_____

Argued - October 10, 2006

THOMAS A. ADAMS, J.P.
REINALDO E. RIVERA
PETER B. SKELOS
ROBERT A. LIFSON, JJ.

2005-06118

DECISION & ORDER

Island Recycling Corp., et al., appellants, v New York
State Department of Taxation and Finance, et al.,
respondents.

(Index No. 17315/99)

Mischel & Horn, P.C., New York, N.Y. (Scott T. Horn of counsel), for appellants.

Eliot Spitzer, Attorney-General, New York, N.Y. (Michael S. Belohlavek and David
Lawrence III of counsel), for respondents.

In an action, inter alia, for a judgment declaring that Tax Law § 1105(c)(5) is unconstitutional as applied to the plaintiffs, the plaintiffs appeal from an order and judgment (one paper) of the Supreme Court, Suffolk County (Cohalan, J.), entered June 3, 2005, which, among other things, granted the defendants' cross motion for summary judgment declaring that Tax Law § 1105(c)(5) and 20 NYCRR § 527.7(a) are not unconstitutional as applied to the plaintiffs.

ORDERED that the order and judgment is affirmed, with costs.

Despite the plaintiffs' claims, the defendants' interpretation of Tax Law § 1105(c)(5) was neither irrational nor unreasonable (*see Matter of Chesterfield Assoc. v New York State Dept. of Labor*, 4 NY3d 597, 605; *Matter of Cecos Intl. v State Tax Commn.*, 71 NY2d 934; *Matter of Rochester Gas and Elec. Corp. v New York State Tax Commn.*, 71 NY2d 931). Furthermore, there is no merit to the plaintiffs' claim that the defendants' determination failed to adhere to prior agency precedent (*see* 20 NYCRR 2375.11), or to their claim that the tax was not fairly apportioned (*see*

November 28, 2006

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Oklahoma Tax Commn. v Jefferson Lines, 514 US 175; *Matter of CWM Chem. Serv.*, DTA No. 818757, 2003 NY Tax LEXIS 307).

The plaintiffs' remaining contentions either are without merit or are not properly before this court.

ADAMS, J.P., RIVERA, SKELOS and LIFSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court