

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

February 1 through February 7, 2019

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

PURCELL, et al., MATTER OF v NEW YORK STATE TAX APPEALS
TRIBUNAL, et al.:

3RD Dept. App. Div. order of 12/6/18; confirmation of determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Taxation--Notice of Deficiency--Whether Tax Law § 16 (f)(2)(C) 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 Qualified Empire Zone Enterprise tax reduction credit;

App. Div. confirmed the determination of respondent Tax Appeals Tribunal sustaining a notice of deficiency of personal income tax imposed under Tax Law article 22, and dismissed the CPLR article 78 petition.

WHEELER (DAMON), PEOPLE v:

App. Term 9th and 10th Judicial Districts order of 9/27/18; affirmance; leave to appeal granted by Rivera, J., 12/13/18;

Crimes--Obstructing Governmental Administration--Whether an accusatory instrument asserting a violation of Penal Law § 190.05 must allege sufficient facts, which if true, establish that the underlying governmental function was authorized; facial sufficiency of accusatory instrument; sufficiency of evidence to prove charged offense beyond a reasonable doubt; various claims of violation of due process at trial;

Middletown City Court, Orange County, convicted defendant, upon a jury verdict, of obstructing governmental administration in the second degree; App. Term affirmed.