STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
BROADVIEW NETWORKS, INC.	:	DECISION DTA NO. 822673
for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period December 1, 2001 through August 31, 2004.	:	

Petitioner, Broadview Networks, Inc., filed an exception to the determination of the Administrative Law Judge issued on August 11, 2011. Petitioner appeared by Ryan, Inc. (Charles Rice, Jr., Esq., and Mark Weiss, Esq., of counsel). The Division of Taxation appeared by Mark Volk, Esq. (Robert A. Maslyn, Esq., of counsel).

Petitioner filed a brief in support of its exception. The Division of Taxation filed a brief in opposition. Oral argument was not requested.

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

ISSUE

Whether petitioner has established entitlement to a refund of sales tax paid on its charges to its customers, to the extent such charges were later deemed uncollectible and were deducted as bad debts for federal income tax purposes.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except for finding of fact "16," which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

Petitioner, Broadview Networks, Inc. (petitioner or Broadview), was formed in New York State in 1991, and operates as a network-based business communications provider, primarily serving small and medium sized business customers throughout the Northeast and Mid-Atlantic states. Petitioner offers local and long distance voice communications, hosted and premises-based VoIP systems, data services, traditional telephone hardware, high-speed internet services, a full suite of managed services and a range of professional services.

Petitioner's corporate headquarters are located in Rye Brook, New York. Petitioner maintains leased offices in various cities in New York, Pennsylvania, New Jersey, Rhode Island, Maryland and Massachusetts, and also maintains switches in New York, Pennsylvania, Massachusetts and Virginia.

Petitioner was registered as a New York State sales tax vendor and filed sales and use tax returns, remitting therewith for the period at issue sales and use taxes in the amount of $16,220,661.00. The Division of Taxation (Division) audited petitioner for the period spanning December 1, 2001 through August 31, 2004, and as a result of that audit issued to petitioner a Notice of Determination dated August 6, 2007 assessing additional sales and use taxes due in the amount of $690,369.78 for the period of the audit, plus penalty and interest.[1] The amount assessed was comprised of tax calculated as due on allegedly nontaxable or exempt sales

[1] Petitioner executed consent documents with respect to the period of limitation on assessment such that sales and use taxes for the period December 1, 2001 through August 31, 2004 could be assessed at any time on or before September 20, 2007.

($581,701.48), recurring expense purchases ($64,554.32) and fixed asset purchases ($44,113.98). In support of its imposition of penalty, the Division noted that petitioner did not furnish source documents (e.g., sales invoices or sales journals) in support of the amount of sales it reported. Notwithstanding this lack of source documents, the Division ultimately accepted the amount of gross sales reported based upon the results of a prior audit of petitioner.

Petitioner challenged the assessment by requesting a conciliation conference with the Division's Bureau of Conciliation and Mediation Services (BCMS). By a Conciliation Order dated September 5, 2008 (CMS No. 221404) the statutory notice was sustained in full.

Petitioner continued its challenge by filing a petition. Petitioner alleged in paragraphs 23 and 24 of its petition that documentation had been presented during the audit to support a claim for credit or refund of sales tax remitted by petitioner on New York customer accounts that became uncollectible (bad debts) and were written off by petitioner during the audit period. No such credit or refund has been allowed, and petitioner continues to assert its entitlement thereto.

The Division's answer alleged, in response to paragraphs 23 and 24, that petitioner did not properly apply for or provide substantiation in support of such claimed (bad debt) credit or refund, and is not entitled to any such credit or refund.

By a motion for summary determination, filed by the Division on July 24, 2009 and opposed by petitioner, the Division sought a determination that petitioner was time-barred from pursuing the portion of its petition that requested a sales tax refund or credit based on uncollectible (bad debt) amounts. The Division's motion was denied by an order, dated January 7, 2010, concluding that petitioner had raised and preserved its claim for credit or refund, and ordering a hearing on the issue of the sufficiency of petitioner's proof in substantiation of its claim for credit or refund.

At the hearing, the parties stipulated that the amount of tax due as the result of the audit is $145,341.26, and that the amount determined and assessed by the Notice of Determination ($690,369.78) is to be reduced to that amount. The parties further stipulated that in light of the consents executed to extend the period of limitations on assessment (***see*** footnote 1), the period within which petitioner could file a claim for refund or credit based on uncollectible amounts was likewise extended to March 20, 2008.

On or about September 15, 2005, during the course of the audit, petitioner's initial representative advised the auditor that petitioner sought credit for sales tax paid on bad debts (i.e., sales tax paid [advanced] by petitioner based on sales it made that allegedly later became uncollectible). While petitioner's representative apparently provided some computer printouts with customer names and amounts (presumably representing such uncollectible sales), no dollar amount of refund or credit sought was specified. Further, according to the auditor, the amounts set out in the computer printouts were not summarized and included customers whose addresses were not New York addresses. In addition, the auditor could not reconcile petitioner's sales information (absent source documents) with petitioner's accounting records and sales tax returns, and could not determine whether petitioner's total sales had been reported net of bad debts or otherwise. Finally, no supporting documentation was provided during the course of the audit to show whether such claimed bad debts had been written off for federal income tax purposes, or to substantiate that sales tax had been paid upon those sales being claimed as bad debts. In the face of these circumstances, the auditor advised petitioner's representative that petitioner's request for credit or refund based on bad debts did not constitute a sufficient application for credit or refund in either form or substance, and further advised that petitioner should file Form AU-11 (Application for Credit or Refund of Sales or Use Tax), including sufficient records to specify

the dollar amount of credit or refund claimed, to substantiate the claim that sales tax had in fact been paid on the allegedly uncollectible sales amounts, and to establish that such sales amounts were unpaid and uncollectible.

During a subsequent meeting on October 13, 2006, petitioner's second, and then-current representative again brought up the subject of uncollectible debts, but did not specify any dollar amount of refund or credit sought, and provided no new or additional information or substantiation. Again, the auditor advised that Form AU-11 should be filed, accompanied by sufficient accounting records to substantiate any claim for credit or refund. The auditor suggested that petitioner's representative submit, with Form AU-11, a summary of the bad debts and journal entries showing the claimed bad debts, and the removal of the same from petitioner's bad debt expense account. The auditor advised that the bad debt information had to be in "auditable condition." No Form AU-11 or information concerning claimed bad debts was provided in response.

By a letter dated May 31, 2007, submitted to the auditor in response to the Division's May 18, 2007 Statement of Proposed Audit Changes for Sales and Use Taxes, petitioner's then-representative stated that petitioner "incurred substantial bad debt losses for telecommunications services rendered to New York customers during the audit period," but that the proposed audit changes (resulting in tax due) "do not reflect the taxpayer's entitlement to recover taxes paid to New York State that were never collected."

The auditor responded by a letter dated June 1, 2007 scheduling a field appointment at petitioner's office on June 27, 2007 and requesting the production of the requested books and records necessary to complete the audit. Petitioner's representative thereafter canceled the scheduled appointment. Petitioner did not file Form AU-11, nor was any further documentation

submitted to the Division specifying the dollar amount of credit or refund sought or substantiating petitioner's entitlement to any such credit or refund. The August 6, 2008 Notice of Determination, issued as the result of the Division's audit of petitioner, did not include any credit or reduction based on petitioner's assertions with respect to sales tax paid on alleged bad debts.

In response to the Division's July 24, 2009 motion, petitioner submitted an affidavit made by its second representative, David Sobel. Mr. Sobel notes that both he, in his May 31, 2007 letter, and petitioner's initial representative, apparently orally, requested credit based on bad debts. He goes on to state that petitioner presented a schedule, a copy of which is attached to his affidavit, to the auditor setting forth the amount ($1,728,669.00) sought as a bad debt credit for sales tax paid but not collected. Mr. Sobel alleges that petitioner gave the auditor access to its records, stating that such records listed the services sold to customers that were either partially paid or never paid and became bad debts for tax and accounting purposes. Such records allegedly set out the amount that could not be collected on the services and the amount of tax remitted on each transaction. Mr. Sobel states that petitioner also gave the auditor access to its financial statements and federal tax returns that set out the deductions taken for bad debts. Finally, Mr. Sobel alleges that petitioner did not provide one "all-encompassing" document that set out the bad debt transactions because the number of bad debt transactions was extremely large and the requisite documentary support would have been voluminous. Instead, petitioner allegedly offered to have a person in its Information Technology Department show the auditor how to navigate petitioner's system and audit the transactions to determine if a credit was due. Mr. Sobel also allegedly offered, in the alternative, that the auditor could review the bad debt transactions on a sample and projection basis in light of the volume of transactions and the amount of time it would take to review each transaction.

The schedule attached to Mr. Sobel's affidavit is a three-page document. The schedule reflects, for each of the sales tax quarterly periods encompassed within the audit period, various total dollar amounts listed under various categories. The initial three categories listed are "Payments & Credits," "Grand Total" and "Balance," followed by the categories "Charges & Usage" and "Taxes," and followed thereafter by various sub-categories listing different taxes and amounts (e.g., "911 Surch.," "Loc. Gross," "State Excise," "State Franch," etc.). This schedule is not dated, and includes no accompanying explanatory narrative, notes or further specific substantiation. Without more, it is not possible to determine with certainty what the document purports to establish. However, consistent with Mr. Sobel's affidavit, the bottom of the third page lists the total dollar amount $1,728,669.00, which is the cumulative total of the amounts listed under the tax sub-categories labeled "School District," "County Sales," "City Sales" and "State Sales," and is the bad debt credit amount alleged to have been presented to the auditor for consideration.[2] This schedule does not list customer names and amounts and thus would not appear to be the same information presented to the auditor by petitioner's initial representative.

At the hearing, the Division's auditor stated that petitioner provided no proof that sales tax was in fact paid on the alleged uncollectible charges, or certified that no part of the tax allegedly paid had ever been refunded or credited to petitioner. The auditor also noted that no records were produced showing the dates of original sales, the amounts on which tax was paid or a calculation thereof, or establishing that petitioner in fact wrote off as bad debts those amounts it paid as sales tax.

[2] It is unclear, and there is no information provided to explain how "school district" (i.e., property-based) taxes might properly be included as sales tax subject to a "bad debt" based credit or refund in any event.

We modify finding of fact "16" of the Administrative Law Judge's determination to read as follows:

> At hearing, petitioner provided its US Corporation Income Tax Return (Form 1120) for each of the years 2001 through 2004, reflecting a bad debt deduction for each of such years in the respective total amounts of $3,754,244.00 (2001), $4,513,060.00 (2002), $16,486,979.00 (2003) and $2,789,215.00 (2004). For the year 2002, the portion of the total amount pertaining to petitioner alone (as opposed to petitioner and its subsidiaries) was, per Form 1120, Statement 2, $3,301,280.00. For the year 2003, the comparatively much larger bad debt deduction amount ($16,486,979.00) reflects the bad debts of Network Plus, an entity acquired by petitioner. For 2004, the bad debt amount includes bad debts of non-New York customers. The workpapers in support of the tax returns for the years 2001 through 2004 were purged or destroyed by petitioner (or its accountants) and are no longer available.[3]

Petitioner also produced four sets of documents, described and titled in their upper left corner as "write-offs" or "write-off data." These documents appear to be computer-generated compilations (or "runs") of petitioner's write-offs and recoveries for each of the years 2001 through 2004. Petitioner's witness, who was not in petitioner's employ during the period in issue but who caused the documents to be generated in preparation for the subject hearing, explained that petitioner did not bill its customers on a per-telephone call basis, but rather billed its customers during the audit period by recurring monthly invoices. No customer invoices were presented at hearing, nor does the record contain any other information specifying what services were included in customer invoices, and whether and what portion thereof was or was not subject to tax. However, presumably the invoice amount was based upon the particular services (or package of services) provided to the customer. If a customer stopped paying its bill to petitioner, petitioner did not immediately discontinue service to the customer, but rather continued to

[3] We modify this fact to more accurately reflect the record.

provide service, at least for some unspecified period of time, during which period the customer's recurring invoice amount would continue to increase. It is not known whether such increase would include late charges, finance charges or other fees in addition to the continued recurring invoice amount.

If a customer continued to not pay, petitioner began collection activities against the customer by trying to collect directly from the customer. If petitioner's in-house collection efforts were unsuccessful, petitioner continued its collection efforts by using the services of a collection agency. If these collection efforts were not completely successful, petitioner would eventually write-off any remaining unpaid balance as uncollectible on its books and records. The record does not specify the time frame during which collection activities were pursued or at what point in time (or within what dollar value parameters, if any) an account balance would be written off as uncollectible.

The computer runs of write-off data were described as reflecting write-offs and recoveries for each of the years 2001 through 2004, and result in the net amount of write-off (the amount by which write-offs exceeded recoveries) for each such year. The computer runs, with the exception of the short run for the month of December 2001 and the eight-month run spanning January through August 2004, which are presented by date, are organized by largest to smallest dollar amount of write-off or recovery.

The computer runs set forth columns listing the customer name, customer identification number, date, transaction type and/or transaction description, transaction amount, and customer address information (service address and mailing address). The customer and service addresses include a variety of different counties throughout New York State.

For 2001, the transaction type is identified by a three digit code number, specifically "110" or "111" representing write-offs, and "116" representing recoveries. For 2002, the transaction type is identified by both the foregoing code numbers and by the description "write off" or "recovery." For 2001, the dollar amounts for both write-offs and recoveries are sometimes enclosed within parentheses and sometimes are not. For 2002, the dollar amounts for write-offs are presented in the same manner (i.e., some parenthetically and some not) while all recovery amounts are enclosed within parentheses. For 2003, like 2001, both the write-offs and recoveries are sometimes enclosed within parentheses and sometimes are not. In addition, the last five pages of the computer run for 2003 (pp. 525 - 530) include only dollar amounts with no other identifying information or description as to such amounts. For 2004, there is a marked increase in the terms found in the transaction description column. That is, while the transaction type column lists only "write off" or "recovery," the transaction description column includes the following:

Transaction Description	Transaction Type
Payment from Agency	Recovery
Credit Card Payment	Recovery
Special Adjustment Credit Reversal	Recovery
Write Off	Write Off
Flip in Error–Other	Recovery
Lock Box Payment	Recovery
Misapplied Payment	Recovery
Collection Forgiveness	Write Off
Balance Adjustment Debit	Recovery

Write Off Reversal	Write Off
Flip in Error Credit Reversal–Other	Write Off

The "write off reversal" items were repeated more than once in the same amount on the same date, with some contained within parentheses and some not. While such entries might indicate circumstances of a posting to an account followed by a correcting (or canceling) reversal thereof and/or a reinstatement of an amount previously posted, all of such entries were listed as write-offs. No explanations were furnished with regard to these entries, or for any of the other various terms or the significance of the distinctions between them.

The net write-off amounts differ from the amounts set forth as the bad debt deduction amounts reported on petitioner's forms 1120, as follows:

> a) 2001: Petitioner's claimed net write-off amount totaled $3,956,254.59, in contrast to its bad debt deduction amount of $3,754,244.00. Since, for 2001, the audit period only included the month of December, petitioner provided a separate computer run, which claims a net write-off amount of $314,249.25 for December 2001.
>
> b) 2002: Petitioner's claimed write-offs ($5,051,418.07) versus claimed recoveries ($893,359.33), result in a claimed net write-off amount of $4,158,058.74, in contrast to its bad debt deduction amount of $4,513,060.00.
>
> c) 2003: Petitioner's claimed net write-off amount totaled $4,448,084.60 in contrast to its bad debt deduction amount of $16,486,979.00.
>
> d) 2004: Petitioner's claimed net write-off amount totaled $2,270,091.50, in contrast to its bad debt deduction amount of $2,789,215.00. Since, for 2004, the audit period only included the months of January through August, petitioner provided a separate computer run, which claims a net write-off amount of $1,807,199.89 for such eight-month period.

In summary, the net write-off amount calculated by petitioner for the audit period totals $10,727,592.48, as follows:

Year or Period	Amount
12/1/2001 - 12/31/2001	$ 314,249.25
2002	4,158,058.74
2003	4,448,084.60
01/01/2004 - 08/31/2004	1,807,199.89
TOTAL	$10,727,592.48

Petitioner, in turn, multiplies such total by a sales tax rate of 8.5 percent to calculate the refund or credit of $911,845.42 it seeks herein.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge determined that petitioner failed to provide the information and substantiation required by statute and regulation to support its claims. The Administrative Law Judge found that, although petitioner made an attempt to comply with the relevant law, ultimately, petitioner failed to meet its burden of proving entitlement to the refund or credit claimed for sales taxes paid on uncollectible accounts as bad debts.

ARGUMENTS ON EXCEPTION

In its exception, petitioner makes similar arguments as made before the Administrative Law Judge. It claims that the documentation included in the record meets its burden of proof and that it is entitled to a refund or credit for uncollectible accounts. Petitioner asserts that it was not required to produce sales invoices.

The Division asserts that the Administrative Law Judge correctly determined that petitioner failed to meet its burden of proof establishing its right to a refund or credit for sales taxes paid pertaining to bad debts.

OPINION

Tax Law § 1132 (e) provides for a refund or credit for sales tax paid where the charge to the customer becomes uncollectible. In relevant part, it states:

> "The commissioner may provide, by regulation, for the exclusion from taxable receipts . . . of amounts representing sales where . . . the receipt, charge or rent has been ascertained to be uncollectible or, in case the tax has been paid upon such receipt, gallons, charge or rent, for refund of or credit for the tax so paid**.** Where the commissioner provides for a credit for the tax so paid, he or she shall require an application for credit to be filed, but he or she may also allow the applicant to immediately take the credit on the return which is due coincident with or immediately subsequent to the time the applicant files his or her application for credit . . ." (Tax Law § 1132 [e]).

The Commissioner has provided, by regulation, for the exclusion of taxable receipts where the receipt has been ascertained to be uncollectible. 20 NYCRR 534.7 of the Commissioner's regulations provides rules for determining the entitlement to refunds and credits attributable to bad debts. 20 NYCRR 534.7 (a) (1) notes:

> "The term *uncollectible* means worthless, as used for federal income tax purposes. Legal action to enforce payment when it would probably not result in satisfaction of a judgement upon a showing of the underlying facts is not a necessary prerequisite in determining worthlessness." (20 NYCRR 534.7 [a] [1]).

Pursuant to 20 NYCRR 534.7 (b) (1), where a receipt has been ascertained to be uncollectible, the vendor may apply for a refund or credit of the taxes paid on such receipt. 20 NYCRR 534.7 (c), provides:

> "*Computation of refund or credit*. (1) Only the amount attributable to the sales tax imposed *and remitted* to the Department of Taxation and Finance by the vendor remaining unpaid by the customer to the vendor is allowable as a refund or credit in respect of a debt determined to be uncollectible." (emphasis in original and added, 20 NYCRR 534.7 [c]).

20 NYCRR 534.7 (c) (2) and (3) go on to provide additional specific instructions and methodologies for computing the amount of credit or refund allowable where the debt

determined to be uncollectible is comprised in part of nontaxable charges. Among other requirements, the regulations require that a taxpayer demonstrate that the sales tax, for which the taxpayer seeks reimbursement, was actually charged and remitted to the Division. (***see Matter of General Elec. Capital Corp. v New York State Div. of Tax Appeals, Tax Appeals Trib.***, 2 NY3d 249 [2004]).

20 NYCRR 534.2 and 533.2 (b) (5) set forth in detail additional requirements for an application for refund or credit. 20 NYCRR 534.2 (a) (1) provides:

> "(i) To claim a refund or credit for any tax, penalty or interest collected or paid which may be credited or refunded, a person must file an application for such refund or credit with the Department of Taxation and Finance."

20 NYCRR 534.2 (a) (2) (i) provides that every application must contain:

> "(g) a full explanation of facts on which the claim is based, including substantiation of the basis for and the amount of the claim;"

20 NYCRR 533.2 (b) (5) specifies, that in the case of claims for credit or refund based upon bad debts:

> "In support of deductions or claims for credit for bad debts, returned merchandise and cancelled sales, retailers must maintain adequate and complete records showing:
>
> (i) date of original sales;
>
> (ii) name and address of purchaser;
>
> (iii) amount purchaser contracted to pay;
>
> (iv) amount on which retailer paid tax; and
>
> (v) all payments or other credits applied to the account of the purchaser, and the dates of such payments.

During the audit, petitioner was advised that its claim required substantiation as set forth by law. This requirement is intended to ensure that the Division receives enough information to verify that a bad debt claim meets the statutory and regulatory requirements. However, petitioner never provided proper substantiation for the bad debts claimed.

Petitioner failed to provide the necessary documentation of proof of payment of sales tax on the alleged uncollectible accounts as required by 20 NYCRR 533.2 (b) (5). Petitioner also failed to provide sales records to determine whether sales tax had been charged and remitted on any of the individual bad debt claims listed on the summary information shown to the auditor.

Although required by 20 NYCRR 534.2 (a) (2) (i) (h), petitioner never certified that no part of the taxes paid have ever been refunded or credited to it. Petitioner failed to provide submissions identifying the individual debts that allegedly had been written off, as is required by 20 NYCRR 534.2 (a) (2) (i) (g). Petitioner never provided a schedule of the computation of State and local taxes paid for which a refund was sought, as required by 20 NYCRR 534.7 (d) (4). Petitioner never provided a breakdown of its claims by county so that the Division could verify that the applicable rate of sales tax had been used and the appropriate amount was now being requested as a credit.

The requirements of 20 NYCRR 533.2 (b) (5), 534.2 and Tax Law §§ 1132 and 1139 have not been met. Petitioner submitted no original bills, invoices or customer contracts, even in example form, to set forth the component parts of the charges in question. Petitioner's submission consists of summaries (computer runs) of customers' names and total amounts, petitioner's corporation tax returns for the relevant periods, and information explaining how and why the total of the claimed bad debt account amounts differs from the amounts set forth as bad debts on petitioner's tax returns for the relevant periods. The record does not disclose whether

petitioner reported sales, on its books of account, net of sales tax. Petitioner's position proceeds from the assertion that its write-offs of certain customer accounts, in whole or in part, presumes both that tax was due on all such accounts and amounts, and that tax was remitted on all such accounts claimed to be bad debts. Petitioner's proof fails to establish these facts.

Petitioner's submissions fail to address the possibility that at least some of petitioner's accounts may not have been subject to tax (e.g., accounts with governmental or charitable entities not subject to tax) and that tax was not, in fact, remitted by petitioner on these accounts. Additionally, and with respect to all of the accounts claimed as uncollectible, the record includes no evidence or explanation concerning amounts that seem to represent nontaxable charges, such as late payment fees or penalties, financing charges on unpaid balances, collection agency fees, and the like. Ultimately, petitioner's claim represents an estimate of the amount of credit or refund to which it might be entitled.

Petitioner did not present the information and documentation required by law for an adequate, verifiable review of its claim. The Division is not required to accept non-source records, such as lists or summaries, to determine the correct tax liability (***Matter of Evangelista***, Tax Appeals Tribunal, September 27, 1990). Petitioner must provide sufficient detailed records, which enable the Division to perform a complete audit (***Matter of Giordano v State Tax Commn.***, 145 AD2d 726 [1988]). As noted, these were not presented in this case. Furthermore, although requested by the Division during the audit, petitioner waited until the hearing to produce certain support for its position; while a taxpayer may introduce documents at a hearing that it failed to produce in the course of an audit, such an approach may limit the utility of such submissions (***Matter of Jenkins Covington, N.Y. v Tax Appeals Trib.***, Tax Appeals Tribunal,

August 25, 1988, ***affd on other grounds*** 195 AD2d 625 [1993], ***lv denied*** 82 NY2d 664 [1994]; ***see also Matter of Airport Industrial Park***, Tax Appeals Tribunal, April 11, 1991).

As the Appellate Division recognized, refunds and credits are a form of tax exemption:

> "A tax credit is 'a particularized species of exemption from taxation' *(Matter of Grace v New York State Tax Commn.*, 37 N.Y.2d 193, 197) and, therefore, petitioner bore the burden of showing 'a clearcut entitlement' to the statutory benefit *(Matter of Luther Forest Corp. v McGuiness*, 164 A.D.2d 629, 632)." (***Matter of Golub Serv. Sta. v Tax Appeals Trib. of State of N.Y.***, 181 AD2d 216, 219 [1992]).

Statutes and regulations authorizing exemptions from taxation are to be strictly and narrowly construed (***see Matter of International Bar Assn. v Tax Appeals Trib. of State of N.Y.***, 210 AD2d 819 [1994], ***lv denied*** 85 NY2d 806 [1995]). In order to qualify for the exemption, petitioner bears the burden of clearly proving its entitlement to the exemption sought (***see Matter of Grace v New York State Tax Commn.***, 37 NY2d 193 [1975], ***rearg denied*** 37 NY2d 816 [1975], ***lv denied*** 37 NY2d 708 [1975]). If ambiguity or uncertainty exists, it is to be resolved in favor of the Division and against allowing the exemption (***see Matter of Charter Dev. Co., L.L.C. v City of Buffalo***, 6 NY3d 578 [2006]).

In this case, petitioner has not provided evidence sufficient to meet its burden of substantiating with any verifiable specificity the amount of the credit or refund to which it may be entitled. Petitioner has requested a refund or credit of an estimated amount and such is insufficient to grant the refund or credit requested.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Broadview Networks, Inc., is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Broadview Networks, Inc., is denied; and,

4. The Notice of Determination dated August 6, 2007, reduced in accordance with the parties' stipulation, together with penalty and interest thereon, is sustained.

DATED: Albany, New York
June 14, 2012

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner