STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
WILMORITE, INC.	:	DECISION DTA NO. 823537
for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Fiscal Years Ended April 30, 2003, April 30, 2004 and April 30, 2005.	:	

Petitioner, Wilmorite, Inc., filed an exception to the determination of the Administrative Law Judge issued on September 6, 2012. Petitioner appeared by David M. Stone, CPA. The Division of Taxation appeared by Amanda Hiller, Esq. (Robert Tompkins, Esq., of counsel).

Petitioner filed a brief in support of its exception. The Division of Taxation filed a letter brief in lieu of a formal brief in opposition. Petitioner filed a reply brief. Oral argument, at petitioner's request, was heard on May 15, 2013, in Albany, New York.

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

ISSUES

I. Whether Tax Law § 607 (a) imports federal statutes regarding audit procedures and limitations into New York and, if so, whether such statutes impact the instant refund claim.

II. Whether payment obligations under a Payment In Lieu of Taxes Agreement must be satisfied, i.e., made, in order to qualify as "eligible real property taxes" for the purposes of Tax Law § 15 (e).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Rochwil Associates (Rochwil), a New York limited liability partnership engaged in real estate rental, has two partners - Rocter Property, Inc. (Rocter), the one percent general partner, and Freemall Holdings, LP, the 99 percent limited partner. Rochwil files a federal U.S. Return of Partnership Income, Form 1065, and a New York State Partnership Return, Form IT-204, on a calendar year basis.

Rocter is a New York corporation that is wholly-owned by petitioner, Wilmorite, Inc. (petitioner or Wilmorite), a New York corporation located in Rochester, New York. Wilmorite files a General Business Corporation Combined Franchise Tax Return (Form CT-3-A) on a fiscal year-ended April 30th basis. Documents in the record indicate that Wilmorite, Rocter, Freemall Holdings, LP, and Rochwil are all located at the same Rochester, New York, address.

On or about January 2, 1992, the County of Monroe Industrial Development Agency (COMIDA), a public benefit corporation of the State of New York, and Rochwil entered into a Payment In Lieu of Tax (PILOT) Agreement. Under the terms of that PILOT Agreement, COMIDA agreed to acquire the Sibley Building located at 228 - 280 East Main Street, Rochester, New York, and to construct and equip a commercial development facility (the facility). COMIDA further agreed to lease the facility to Rochwil and to grant Rochwil an option to purchase the facility. According to the PILOT agreement, Rochwil was responsible for the PILOT payments and agreed to make said payments to the County of Monroe and the City of

Rochester.[1] The agreement was signed by the chairman of COMIDA, and the vice president of Rocter, general partner, on behalf of Rochwil.

Pursuant to a Certificate of Eligibility issued on November 6, 2002, but effective as of July 16, 2002, Rochwil became certified as eligible to access Empire Zone Benefits, effective July 16, 2002 for the property located at 228 East Main Street/25 Franklin Street, Rochester, New York, within the boundaries of the Rochester Empire Zone.

On October 13, 2003, the general partner signed and dated Rochwil's Amended New York Partnership Return for the year 2002.[2] Review of Schedule B - Partners' New York modifications, credits, etc. of this amended return reveals that the following items were reported on Part II - Partners' credit information: on line 29, an EZ wage tax credit in the amount of $2,250.00 (per the attached Form IT-601, Claim for EZ Wage Tax Credit, related to QEZE business Rochwil Associates); on line 35, a QEZE credit for real property taxes in the amount of $462,012.00 (per the attached Form IT-604, Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit, related to QEZE business Rochwil Associates); on line 36, a QEZE employment increase factor of 1; on line 37, a QEZE zone allocation factor of 100; on line 38, a QEZE benefit period factor of 1, and on line 39, an Add-back of QEZE credit for real property taxes of "NONE" (per the attached Form IT-604, Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit related to the QEZE business, Rochwil Associates). An attachment to the Form IT-604, entitled "New York State Property Tax Credit," listed the

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[1] Paragraph 1(a) required Rochwil to annually pay to Monroe County and the City of Rochester, as a payment in lieu of taxes, an amount equal to 100 percent of the taxes, service charges, special ad valorem levies, or similar tax equivalents that Rochwil would be liable to pay, if it were the owner of the facility. Paragraph 1(d) required Rochwil to pay in full special assessments and special district charges, including Monroe County Pure Waters charges, unless Rochwil would be exempt from such charges if it were the owner of the facility.

[2] The record does not include the original New York Partnership Return, including any attachments, that Rochwil filed for the year 2002.

following: "City of Rochester Comida" in the amount of $348,804.72; "Monroe County Comida" in the amount of $66,211.20; "City Services" in the amount of $33,177.79, and "County Pure Water" in the amount of $13,818.45 for "Total Property Tax Incurred" in the amount of $462,012.16. Rochwil issued Amended New York Schedule K-1 Equivalent, Partner's Share of Income Deductions, etc., forms to Rocter and Freemall Holdings, L.P. The Amended Schedule K-1 Equivalent issued to Rocter reported an EZ wage tax credit in the amount of $2,250.00 and a QEZE credit for real property taxes in the amount of $462,012.00. The record is silent as to when this amended partnership return was filed with the Division of Taxation (Division).

On September 29, 2004, Rochwil filed its New York Partnership Return for the year 2003. Review of Schedule B - Partners' New York modifications, credits, etc. of this return reveals that the following items were reported on Part II - Partners' credit information: on line 29, an EZ wage tax credit in the amount of $2,250.00 (per the attached Form IT-601, Claim for EZ Wage Tax Credit, related to QEZE business Rochwil Associates); on line 35, a QEZE credit for real property taxes in the amount of $490,995.00 (per the attached Form IT-604, Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit, related to QEZE business Rochwil Associates); on line 36, a QEZE employment increase factor of 1.0000; on line 37, a QEZE zone allocation factor of 100.0000, and on line 38, a QEZE benefit period factor of 1.0. An attachment to the Form IT-604, entitled "New York State Property Tax Credit," listed the following: "City of Rochester Comida" in the amount of $376,434.74; "Monroe County Comida" in the amount of $67,795.20; "City Services" in the amount of $34,136.48 and "County Pure Water" in the amount of $12,628.18 for "Total Property Tax Incurred" in the amount of $490,994.60. Rochwil issued New York Schedule K-1 Equivalent Partner's Share of Income Deductions, etc. forms to Rocter and Freemall Holdings, L.P. The Schedule K-1 Equivalent

issued to Rocter reported an EZ wage tax credit in the amount of $2,250.00 and a QEZE credit for real property taxes in the amount of $490,995.00.

On July 1, 2005, Rochwil filed its New York Partnership Return for the year 2004. Review of Schedule B - Partners' New York modifications, credits, etc. of this return reveals that the following items were reported on Part II - Partners' credit information: on line 29, an EZ wage tax credit in the amount of $2,625.00 (per the attached Form IT-601, Claim for EZ Wage Tax Credit, related to QEZE business Rochwil Associates); on line 35, a QEZE credit for real property taxes in the amount of $490,698.00 (per the attached Form IT-604, Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit, related to QEZE business Rochwil Associates); on line 36, a QEZE employment increase factor of 1.0000; on line 37, a QEZE zone allocation factor of 1.0000, and on line 38, a QEZE benefit period factor of 1.0. An attachment to the Form IT-604, entitled "New York State Property Tax Credit," listed the following: "City of Rochester Comida" in the amount of $355,422.34; "Monroe County Comida" in the amount of $86,670.00; "City Services" in the amount of $36,411.40, and "County Pure Water" in the amount of $12,193.87 for "Total Property Tax Incurred" in the amount of $490,697.61. Rochwil issued New York Schedule K-1 Equivalent Partner's Share of Income Deductions, etc., forms to Rocter and Freemall Holdings, L.P. The Schedule K-1 Equivalent issued to Rocter reported an EZ wage tax credit in the amount of $2,625.00 and a QEZE credit for real property taxes in the amount of $490,698.00.

On January 15, 2004, petitioner and its subsidiaries filed a CT-3-A General Business Corporation Combined Franchise Tax Return for fiscal year ended April 30, 2003. On line 100 of that combined franchise tax return, Wilmorite claimed a refund of unused tax credits in the amount of $886,423.00. These unused tax credits consisted of QEZE real property tax credits

claimed by, among other members of the combined group, Rocter. Included in the combined franchise tax return is the Form CT-604-CP, Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit for Corporate Partners that Rocter filed for the tax period May 1, 2002 through April 30, 2003, on which Rocter claimed a QEZE credit for real property taxes in the amount of $462,012.00 obtained from its one percent interest in Rochwil.

On January 18, 2005, petitioner and its subsidiaries filed a CT-3-A General Business Corporation Combined Franchise Tax Return for the fiscal year ended April 30, 2004. On line 100 of that combined franchise tax return, Wilmorite claimed a refund of unused tax credits in the amount of $960,266.00 These unused tax credits consisted of QEZE real property tax credits claimed by, among other members of the combined group, Rocter. Included in the combined franchise tax return is the Form CT-604-CP, Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit for Corporate Partners that Rocter filed for the tax period May 1, 2003 through April 30, 2004, on which Rocter claimed a QEZE credit for real property taxes in the amount of $490,995.00 obtained from its one percent interest in Rochwil.

On January 17, 2006, petitioner and its subsidiaries filed a CT-3-A General Business Corporation Combined Franchise Tax Return for the fiscal year ended April 30, 2005. On line 100 of that combined franchise tax return, Wilmorite claimed a refund of unused tax credits in the amount of $1,026,902.00.[3] These unused tax credits consisted of QEZE real property tax credits claimed by, among other members of the combined group, Rocter. Included in the combined franchise tax return is the Form CT-604-CP, Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit for Corporate Partners that Rocter filed for the tax period

[3] Subsequently, Wilmorite filed an amended combined franchise tax return for the tax period ended April 30, 2005, on which a refund of unused tax credits in the amount of $1,029,204.00 was claimed.

May 1, 2004 through April 30, 2005, on which Rocter claimed a QEZE credit for real property taxes in the amount of $490,698.00 obtained from its one percent interest in Rochwil.

As part of the Division's review of Wilmorite's requests for refund of unused tax credits claimed on its combined franchise tax returns, filed for the fiscal years ended April 30, 2003 and April 30, 2004, Diane Houck, a tax technician in the Division's Income/Franchise Desk Audit Bureau, sent a letter dated April 24, 2006 to Nancy Haney, CPA, a former employee of Wilmorite. In her letter, Ms. Houck wrote, in pertinent part, as follows:

> After reviewing the information concerning your Claims for QEZE Credit for Real Property Taxes for the tax periods ended 04/30/03 and 04/30/04, additional information is necessary to finalize the refund case.
>
> With regards to the credit from Rochwil Associates, the following information is requested:
>
> 1. Indicate where the special allocation for real estate taxes is reported on the federal partnership return, Schedule K-1, Partner's Share of Income, Credits, Deductions, etc., for the periods ended 12/31/02 and 12/31/03.
>
> 2. Copies of documentation to support your basis for claiming the City of Rochester and Monroe County Comida payments for the real property tax credit.
>
> 3. An explanation for the difference in the amount of the real property tax deduction reported on the partnership returns and the amount of the credits claimed.
>
> 4. The date of hire, date of termination (if applicable), and the number of hours worked each quarter, for the employees listed on the Claim for QEZE Credit, form IT-604, for tax periods ended 12/31/02 and 12/31/03.

In response to Ms. Houck's April 24, 2006 letter, Ms. Haney sent a letter dated May 16, 2006, along with enclosed documentation. The letter stated, in pertinent part, as follows:

> Item 1 requests where / how the special allocation for real property taxes was reported on the federal partnership returns for 2002 and 2003. Section 4.2.4 of the Amended and Restated Partnership Agreement states that the General Partner may elect to allocate any / all of the real property taxes to the General Partner for any

> such Fiscal Year. Thus, while the General Partner elected a 100 percent allocation of such, as evidenced by its receipt of 100 percent of the NYS credit-related information, the allocation of the underlying deduction is not as apparent. That is, based on the rules contained in Internal Revenue Code ("IRC") § 461, the accrued taxes are not immediately deductible to the partners. Even though the special allocation has taken place, with each partner responsible for its economic share, the partners are able to deduct when the partnership pays the liability.
>
> During 2002, the real property taxes paid by the partnership related to the 2000 tax year, which is a tax year that precedes the effective date of the current Partnership Agreement permitting the special allocation. During 2003, the real property taxes paid covered the periods 2001/2002 and 2002/2003. Only the 2002/2003 tax payment(s) were specially allocated as per the Amended and Restated Partnership Agreement.
>
> * * *
>
> Item #3 requested an explanation of the difference between the amount of the real property tax deduction and the credit amount. As discussed for Item 1, real property taxes are deducted subject to the federal rules of IRC § 461, which in effect dictates the timing of deduction to coincide with the payment of liability. The QEZE credit for real property taxes for both 2002 and 2003 represent the real property taxes accrued / incurred during the tax years in which the real property taxes were levied, which is consistent with New York State law.

The Division also conducted a review of petitioner's request for refund of unused tax credits claimed on its combined franchise tax return filed for the fiscal year ended April 30, 2005.

On November 22, 2006, the Division issued to petitioner a Statement of Tax Reduction or Overpayment, pertaining to petitioner's fiscal year ended April 30, 2003 and disallowing petitioner's request for refund of unused tax credits for such fiscal year in the amounts of $27,826.00, pertaining to special assessment charges included in a different subsidiary's Claim for QEZE Credit for Real Property Taxes, and $462,012.00, pertaining to Rocter's Claim for QEZE Credit for Real Property Taxes obtained from its interest in Rochwil. On the same date, the Division issued to petitioner a Statement of Tax Reduction or Overpayment, pertaining to

petitioner's fiscal year ended April 30, 2004 and disallowing petitioner's request for refund of unused tax credits for such fiscal year in the amounts of $27,347.00, pertaining to special assessment charges included in a different subsidiary's Claim for QEZE Credit for Real Property Taxes, and $490,995.00, pertaining to Rocter's Claim for QEZE Credit for Real Property Taxes obtained from its interest in Rochwil. On March 12, 2007, the Division issued to petitioner a Statement of Tax Reduction or Overpayment, pertaining to petitioner's fiscal year ended April 30, 2005 and disallowing petitioner's claim for refund of unused tax credits for such fiscal year in the amounts of $27,501.00, pertaining to special assessment charges included in a different subsidiary's Claim for QEZE Credit for Real Property Taxes, and $490,698.00, pertaining to Rocter's Claim for QEZE Credit for Real Property Taxes obtained from its interest in Rochwil.[4]

All three statements of tax reduction or overpayment contained the following reason for the disallowance of petitioner's request for refund of the unused tax credits consisting of Rocter's Claim for QEZE Credit for Real Property Taxes:

> The term "eligible real property taxes" means taxes imposed on real property which is owned by the QEZE and located in an empire zone with respect to which the QEZE is certified pursuant to article eighteen-b of the general municipal law, provided such taxes become a lien on the real property during a taxable year in which the owner of the real property is both certified pursuant to article eighteen-b of the general municipal law and a qualified empire zone enterprise. In addition, the term "eligible real property taxes" includes payments in lieu of taxes made by the QEZE to the state, a municipal corporation or a public benefit corporation, pursuant to a written agreement entered into between the QEZE and the state, a municipal corporation, or a public benefit corporation. Provided, however, a payment in lieu of taxes made by the QEZE pursuant to a written agreement executed or amended on [or] after January first, two thousand one, shall not constitute eligible real property taxes unless such written agreement is approved by both the department of economic development and the office of real property services as satisfying generally accepted and recognized norms and standards of real property appraisals [NYS Tax Law Section 15(e), applicable to taxable years

[4] Petitioner is not challenging the disallowance of credits related to a different subsidiary's claims for QEZE credit for real property taxes for fiscal years ended April 30, 2003, April 30, 2004 and April 30, 2005.

beginning on and after January 1, 2001, through December 31, 2004].

> Based on the above, in order to meet the definition of "eligible real property taxes", the taxes must be paid. Since the empire zone real property taxes were not paid, the QEZE credit for real property taxes claimed as a pass-thru [*sic*] from the QEZE Rochwil Associates LP, is disallowed.

Petitioner filed a petition protesting the denial of its claims for refund of the unused tax credits, consisting of Rocter's claims for QEZE Credit for Real Property Taxes obtained from its interest in Rochwil, for the fiscal years ended April 30, 2003, April 30, 2004 and April 30, 2005. In its petition, petitioner admitted that the payments in lieu of taxes were not paid by Rochwil in the years in which they were incurred because of financial difficulties. However, petitioner asserted that for the years 2001 through 2004, Tax Law former § 15 (e) did not require payment of either the real property taxes or the payments in lieu of taxes by the QEZE in order to qualify as eligible real property taxes.

On December 13, 2010, petitioner provided documentation to the Division indicating that some payments of the PILOT obligations totaling $363,042.55 were made as follows:

For fiscal year ended April 30, 2003:

COMIDA	$66,211.20	paid on August 24, 2004
City Services	$33,177.79	paid on November 18, 2003
County Pure Water	$13,818.45	paid on August 23, 2004
Total	$113,207.44	

For fiscal year ended April 30, 2004:

COMIDA	$67,795.20	paid on September 26, 2006
City Services	$34,136.47	paid on November 16, 2004
County Pure Waters	$12,628.18	paid on June 3, 2005
Total	$114,559.85	

For fiscal year ended April 30, 2005:

COMIDA	$86,670.00	paid on May 27, 2008
City Services	$36,411.39	paid on July 26, 2005, November 17, 2005
County Pure Waters	$12,193.87	paid on June 6, 2007
Total	$135,275.26	

After reviewing the documentation provided, the Division agreed to allow a refund of corporation franchise tax in the total amount of $220,676.40 (i.e., late COMIDA payments in the amounts of $66,211.20, $67,795.20 and $86,670.00 included in Rocter's claims for QEZE Credit for Real Property Taxes for the fiscal years ended April 30, 2003, April 30, 2004 and April 30, 2005), which was a portion of the total amount of unused tax credits that petitioner requested to be refunded on its combined franchise tax returns for the fiscal years ended April 30, 2003, April 30, 2004 and April 30, 2005. At the hearing, auditor Mark Husted explained that the Division would allow Rocter's Claim for QEZE Credit for Real Property Taxes for the late payments for each of the fiscal years at issue except for the following late payments of special assessments and water bills: City Services charges in the amounts of $33,177.79, $34,136.47 and $36,411.39; and County Pure Waters charges in the amounts of $13,818.45, $12,628.18 and $12,193.87.

The record includes copies of the City of Rochester, New York, tax bills issued to "COMIDA - Rochwil Associates" for the years 2002-2003, 2003-2004 and 2004-2005, on which the following "Other City Charges"[5] are listed: sidewalk snow plow; street cleaning full; roadway snow plow, downtown zone 1; "HAZARD SDWLK REPLACE"; downtown guide and encroachments.

The Rochester Downtown Enhancement District (District) was created pursuant to Local Improvement Ordinance No. 1291 of 1989 of the Council of the City of Rochester. The District

[5] In documents prepared by petitioner and Rochwil, the "Other City Charges" were called "City Services."

was created to provide a special enhanced level of care and maintenance of the special amenities installed as part of the Main Street improvement projects,[6] and included all properties located within the boundaries of the District. All enhanced services provided within the District were in addition to, and not a substitute for, basic services provided by the City of Rochester. Property owners within the District receive a special assessment that is based upon a two-factor, two-zone formula. With respect to the factors, a property's assessed value and gross area are equally weighted. Zone 1 properties are comprised of all properties that front on the Main Street improvements or that are located within the primary district boundaries and have enclosed walkway access to Main Street. Zone 2 properties are comprised of all other properties within the boundaries of the District. The special assessment charge for Zone 2 properties and all parking facilities is half that charged to Zone 1 properties.

At the time of the hearing, City of Rochester COMIDA PILOT obligations, totaling $1,080,661.80, for the years 2002, 2003 and 2004 were unpaid.

The record does not include copies of the federal partnership returns filed by Rochwil for the years 2002, 2003 and 2004. It also does not include a copy of Rochwil's Amended and Restated Partnership Agreement.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge explained that, at the hearing in this matter, certain modifications were made to the subject Statements of Tax Reduction or Overpayment (Statements), which are dated November 22, 2006 for the fiscal years ended April 30, 2003 and April 30, 2004, and March 12, 2007 for the fiscal year ended April 30, 2005. The Division

[6] The Main Street and West Main Street improvement projects involved the installation of special amenities, such as decorative pavers, special street lights, benches, bus shelters, trees and planters.

granted a refund in the amount of $220,676.40, because petitioner proved that it made late payments to COMIDA in the amounts of $66,211.20, $67,795.20 and $86,670.00 for the fiscal years ended April 30, 2003, April 30, 2004 and April 30, 2005, respectively. However, the Division disallowed the amounts related to late payments of City Services and County Pure Water charges because these levies did not constitute "eligible real property taxes." Petitioner did not contest these disallowances on these grounds.

The Administrative Judge found no merit in the argument based upon federal statutes and Tax Law § 607 (a). Further, the Administrative Law Judge found that, under the language of Tax Law § 15 (e), the satisfaction of an obligation to make payments pursuant to a PILOT agreement makes such payments into "eligible real property taxes" for the purposes of the QEZE real property tax credit. As such, the Administrative Law Judge granted the petition to the extent that the Division allowed a credit for the late payments to COMIDA, but otherwise denied the petition and sustained the Statements as modified.

ARGUMENTS ON EXCEPTION

Petitioner accepts the Administrative Law Judge's findings of fact, and challenges only the conclusions of law in the determination. Petitioner contends that the Administrative Law Judge erroneously rejected its statute of limitations argument, which was based upon the application of provisions of the Internal Revenue Code (IRC or 26 USC) to the administration of New York taxes.

Petitioner submits that federal law bars the instant refund denial. The basis for this position is petitioner's reading of Tax Law § 607 (a). Petitioner claims that this statute "unifies" New York and federal tax laws, in particular, provisions implemented under the Tax Equity and Fiscal Responsibility Act of 1982 (Pub L. 97-248 or TEFRA). Using this premise, petitioner

argues that the Division violated IRC § 6221 by adjusting the return of a partner, i.e., petitioner, instead of the return of the partnership, i.e., Rochwil. Petitioner contends that this defect is fatal because, as set by IRC § 6229, the three-year limitations period for auditing the Rochwil partnership has expired. As such, petitioner argues that the Statements should be cancelled, and the refunds granted.

Petitioner also challenges the Division's interpretation of the term "eligible real property taxes" provided in Tax Law § 15 (e). It contends that the obligation to make a payment meets the statutory requirements, and that the satisfaction of the obligation is irrelevant to determine whether an item constitutes an "eligible real property tax." Petitioner supports its position by arguing that the terms "PILOT" or "payment in lieu of tax" constitute terms of art, and do not refer to actual payments. As such, petitioner contends that the determination should be reversed.

The Division argues that the determination of the Administrative Law Judge should be affirmed in its entirety. Regarding the statute of limitations argument, the Division notes that this matter does not involve an audit, but instead, the review of refund claims, for which there are no relevant limitations period in New York law. Addressing petitioner's argument, the Division further notes that the TEFRA statutes, which govern Internal Revenue Service (IRS) audit procedures for qualifying partnerships, are not at issue because petitioner introduced no evidence indicating that Rochwil was a TEFRA partnership. It also argues that petitioner's premise is flawed because Tax Law § 607 (a) does not permit importing an entire federal statute into New York law. The Division also notes that the Legislature has not adopted TEFRA or passed parallel statutes to these federal laws.

The Division adopts the Administrative Law Judge's position regarding the interpretation of "eligible real property taxes." It contends that Tax Law § 15 (e) requires that payments in lieu

of taxes actually be "made" in order to qualify as "eligible real property taxes." The Division further argues that petitioner failed to meet its burden of proving that its interpretation was not only reasonable, but the only logical interpretation of the statute. As such, the Division contends that the determination should be affirmed, and that the Statements, as modified below, should be sustained.

OPINION

This matter presents two questions of statutory interpretation. The first is whether the Tax Law requires the Division to follow federal statutes when issuing a refund denial to a partnership. The second question is whether "eligible real property taxes" under Tax Law § 15 (e) includes payments in lieu of taxes that were owed but not made.

As this matter involves statutory interpretation, our goal is to "effectuate the intent of the Legislature" (***Majewski v Broadalbin-Perth Cent. School Dist.***, 91 NY2d 577, 583 [1998] [internal quotation marks omitted]).

> "The legislative intent is to be ascertained from the words and language used, and the statutory language is generally construed according to its natural and most obvious sense, without resorting to an artifical or forced construction" (***Frank v Meadowlakes Dev. Corp.***, 6 NY3d 687, 692, ***quoting*** McKinney's Cons Laws of NY, Book 1, Statutes § 94).

The plain meaning of the statute's language constitutes the "clearest indicator of the legislative intent" (***see e.g. Matter of New York County Lawyers' Assn. v Bloomberg***, 19 NY3d 712, 721 [2012], ***rearg denied*** 20 NY3d 983 [2012]). Tax credits, such as the QEZE real property tax credits at issue, constitute a particularized species of exemption from tax (***Matter of Marriott Family Rests. v Tax Appeals Trib. of State of N.Y.***, 174 AD2d 805 [1991], ***lv denied*** 78 NY2d 863 [1991]). "Statutes creating tax exemptions must be construed against the taxpayer" (***Matter***

of Federal Deposit Ins. Corp. v Commissioner of Taxation & Fin., 83 NY2d 44, 49 [1993] [internal quotation marks and citation omitted]).

In order to prevail over the Division's statutory interpretation, petitioner must prove that, under the attendant circumstances, its "interpretation of the statute is not only plausible, but also that it is the only reasonable construction" (***Matter of Moran Towing & Transp. Co. v New York State Tax Commn.***, 72 NY2d 166, 173 [1988]). Petitioner can only meet its burden by showing clear entitlement to the QEZE real property tax credits at issue (Tax Law § 1089 [e]; ***Matter of Stevenson v New York State Tax Appeals Trib.***, 106 AD3d 1146 [2013]). Bearing these principles in mind, we now turn the arguments in this matter.

Petitioner reads Tax Law § 607 (a) as incorporating the federal income tax statutes into New York law. Tax Law § 607 (a) provides the following language:

> "General. *Any term* used in [Article 22] *shall have the same meaning as when used in a comparable context* in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required but such meaning shall be subject to the exceptions or modifications prescribed in this article or by the statute . . . " (emphasis added).

Utilizing this statute, petitioner challenges the instant refund denials based upon sections of the IRC, implemented under and commonly referred to as TEFRA, which govern IRS policies and procedures regarding the audits of qualifying partnerships. Petitioner's argument relies upon IRC § 6221, which provides the following language:

> "Tax treatment determined at partnership level. Except as otherwise provided in this subchapter, the tax treatment of any partnership item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item) shall be determined at the partnership level" (26 USC § 6221).

This argument also relies upon the limitations period for partnerships, also found in the same subchapter of the IRC:

> "General rule. - - Except as otherwise provided in this section, the period for assessing any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before the date which is 3 years after the later of - -
>
> (1) the date on which the partnership return for such taxable year was filed, or
>
> (2) the last day for filing such return for such year (determined without regard to extensions)" (26 USC § 6229).

Applying the foregoing federal statutes to the instant denials of New York tax credits, petitioner contends that the Statements must be held invalid because they were not issued to the partnership, i.e., Rochwil, but instead to petitioner as a partner. Petitioner also argues that this defect cannot be cured because the three-year limitations period for assessing the partnership has expired.

Initially, we find that this argument relies upon a misunderstanding of Tax Law § 607 (a). This statute promotes conformity by importing federal definitions of terms into New York tax statutes when used in similar context (***see Matter of Dreyfus Special Income Fund v New York State Tax Commn.***, 126 AD2d 368 [1987], ***appeal granted*** 70 NY2d 603 [1987]). As explained by the Court in ***Matter of Karlsberg v Tax Appeals Trib. of State of N.Y.*** (85 AD3d 1347 [2011], ***appeal dismissed*** 17 NY3d 900 [2011]),

> "Pursuant to the doctrine of federal conformity, courts should adopt, whenever reasonable and practical, the federal construction of substantially similar tax provisions, in particular where the state statute is modeled on the federal law" (internal quotes and citations omitted) (***id.*** at 1348).

Contrary to petitioner's position, neither the doctrine of federal conformity nor Tax Law § 607 (a) sanction the importation of federal laws into New York. Rather, the law and doctrine permit construing terms in New York tax laws with the same meanings as terms in parallel

federal statutes, provided that such constructions are reasonable or not precluded by other sections of the Tax Law.

Petitioner's argument based upon federal conformity must be rejected because there are no New York statutes similar to either IRC § 6221 or IRC § 6229. The Legislature has not adopted statutes that mirror TEFRA. Petitioner has not presented, nor could we find, any New York law dictating either that the Division must modify a partnership item at the partnership level, or establishing a limitations period for issuing a notice to a partnership. As such, this argument advances an incorrect construction of Tax Law § 607 (a). This statute does not permit the wholesale importation of federal statutes into New York law, but instead provides for conformity in the meaning of similar terms in parallel statutes. Therefore, we reject this argument based upon IRC §§ 6221 and 6229 because neither possesses a New York parallel, and therefore, they do not apply to the Division.[7]

We find that petitioner's argument must also fail because there is no relevant statute of limitations in this matter. Even if the TEFRA limitations period regarding assessments was applicable in New York, it would have no bearing in the instant matter because the Statements do not assess tax, but instead, disallow claims for refund of unused tax credits. The Tax Law does not impose a limitation period for the review of refund claims. Rather, it provides that if the Division does not act on a claim within six months, the taxpayer may presume the refund has been denied and may appeal the denial (***see e.g.*** Tax Law § 1089 [c]). As the Tax Law does not impose a time limitation on reviews of claims for refund, we reject the argument that the Statements were time-barred.

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[7] We also note that the record does not contain the Rochwil tax returns, or otherwise establish that Rochwil was a partnership subject to TEFRA. As such, petitioner has not established that the subject sections of the IRC would even apply in this matter.

We next turn to petitioner's proffered interpretation of "eligible real property taxes." The relevant portion of the statutory language of Tax Law § 15 (e) provides:

> "In addition, the term 'eligible real property taxes' includes payments in lieu of taxes *made* by the QEZE to the state, a municipal corporation or a public benefit corporation pursuant to a written agreement entered into between the QEZE and the state, municipal corporation, or public benefit corporation" (emphasis added).

This statute must be narrowly construed because it relates to an exemption from taxation (***see e.g. Matter of Stevenson v New York State Tax Appeals Trib.***, 106 AD3d 1146 [2013], ***surpa***). Petitioner contends that it is ambiguous as to whether "eligible real property taxes" include payments made or payments that are obligated to be made pursuant to a PILOT agreement. As such, petitioner contends that the statute should be interpreted in its favor.

We find that the statutory language clearly and unambiguously limits the inclusion of payments in lieu of taxes in the term "eligible real property taxes" only to the extent that such payments are actually "made by a QEZE to the state, municipal corporation, or public benefit corporation pursuant to a written agreement entered into between [the respective parties]" (Tax Law § 15 [e]). The Legislature indicated this intent by using the word "made" after "payments in lieu of taxes" (***id.***). Petitioner has not presented, nor could we find, any persuasive authority suggesting that this usage of the word "made" refers to something other than the term's plain meaning. In this context, the rules of statutory construction require defining "made" according to its plain meaning (McKinney's Cons of Laws, Statutes § 144). Therefore, we conclude that Tax Law § 15 (e) includes payments in lieu of taxes only insofar as such payments are actually made by a QEZE to the state, a municipal corporation, or a public benefit corporation pursuant to a written agreement between the respective parties.

Given the foregoing, we affirm determination of the Administrative Law Judge. Petitioner failed to prove entitlement to QEZE real property tax credits for payments that were not made by Rochwil for the years 2002, 2003 and 2004 when the Statements were issued. Simply put, petitioner was not entitled to the credits because the payments were not made. However, at the hearing, petitioner introduced evidence that *late* payments were made to COMIDA pursuant to the Rochwil PILOT Agreement, and the Division granted a portion of the refund claim. We do not disturb this modification.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Wilmorite, Inc. is denied;

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

3. The petition of Wilmorite, Inc. is granted to the extent provided in the following subparagraphs, but is otherwise denied:

a. the Statement of Tax Reduction or Overpayment, dated November 22, 2006, pertaining to the fiscal year ended April 30, 2003, is modified to allow a refund of $66,211.20;

b. the Statement of Tax Reduction or Overpayment, dated November 22, 2006, pertaining to the fiscal year ended April 30, 2004, is modified to allow a refund of $67,795.20; and,

c. the Statement of Tax Reduction or Overpayment, dated March 12, 2007, pertaining to the fiscal year ended April 30, 2005, is modified to allow a refund of $86,670.00, for total of refund of $220,676.40;

4. The Statements of Tax Reduction or Overpayment, dated November 22, 2006 and March 12, 2007, are modified to the extent indicated in paragraph "3" above, but are otherwise sustained.

DATED: Albany, New York
November 14, 2013

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

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

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