STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ACCIDENTAL HUSBAND INTERMEDIARY, INC.	:	DECISION DTA NO. 827186
For Redetermination of a Deficiency or for Refund under Article 9-A of the Tax Law for the period ended December 31, 2007.	:	

Petitioner, Accidental Husband Intermediary, Inc., filed an exception to the determination of the Administrative Law Judge issued on March 15, 2018. Petitioner appeared by Greenberg Traurig, LLP (Glenn Newman, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Bruce D. Lennard, Esq., of counsel).

Petitioner filed a brief in support of the exception. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument was heard on October 25, 2018, in New York, New York, which date began the six-month period for issuance of this decision.

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

ISSUES

I. Whether petitioner timely filed a refund claim with the Division of Taxation.

II. If not, whether the Division of Taxation should use its discretionary power to grant the refund claim pursuant to Tax Law § 1096 (d).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge, except that we have modified findings of fact 1, 12 and 21 to more fully reflect the record. As so modified, the Administrative Law Judge's findings of fact appear below.

1. Petitioner, Accidental Husband Intermediary, Inc., produced a film in New York City entitled *The Accidental Husband* (film) for which production concluded in 2007. On November 3, 2006, petitioner applied for an Empire State film production credit (credit) pursuant to Tax Law §§ 24 and 210 (36) for costs incurred in the production of the film.

The credit application process is described on page 4 of an October 2009 report on the Empire State film production credit, issued jointly by the New York State Governor's Office for Motion Picture and Television Development (MP/TV) and the New York State Department of Taxation and Finance ("Report on the Empire State Film Production Tax Credit"), in relevant part, as follows:

> "To apply for the credit, a production company must first submit an initial application that leads to conditional approval of the project. Applicants provide data, such as the type of production, production schedule, and location information, and projected expenditures that help MP/TV determine if a given production is eligible and qualified to participate in some aspect of the tax incentive program. Projections are provided for items such as estimated total budget, expenditures at a qualifying production facility, estimates of shooting days and expenditures outside of New York.
>
> After reviewing the information provided in the initial application, MP/TV makes a preliminary determination whether to certify the applicant for conditional eligibility in the program.
>
> After the production is complete, the applicant submits a final application to MP/TV detailing actual expenditures both within and without New York demonstrating that the required thresholds were met, as well as additional supporting data, such as a payroll expenditure report, a complete cast and crew list, and daily production reports. Based on a review of these documents, MP/TV

> determines the amount of credit earned by the applicant and provides a tax credit certificate specifying the amount of credit allowed."

2. Petitioner thereafter received such a certificate of tax credit (certificate), dated October 15, 2008, indicating that petitioner's application for the credit in connection with the production of the film had been approved as of that date.

3. The certificate indicated that the amount of the credit was $1,203,501.00 and that the "completion year" for the credit was "December 31, 2007." The certificate also indicated that the credit was allowed for the taxable year in which the film was completed.

4. Pursuant to Tax Law § 24 (a) (2), the credit must be claimed over a two-year period beginning in the first taxable year in which the credit may be claimed and in the next succeeding taxable year, with one-half of the amount of the credit allowed to be claimed in each year.

5. Tax Law § 1087 (a), as pertinent in this matter, provides that a claim for a credit, such as the credit at issue herein, must be filed by an article 9-A taxpayer within three years from the time the taxpayer's New York State business corporation franchise tax return (NYS tax return) was filed.

6. Petitioner was an article 9-A taxpayer in 2007 and 2008, and thereafter.

7. Petitioner was required to claim one-half of its $1,203,501.00 credit on its NYS tax return for 2007, and the other half of the credit on its NYS tax return for 2008.

8. Petitioner filed its original NYS tax return for 2007 on September 15, 2008, before it received its certificate. The amount of tax due and paid with the return was $100.00.

9. On its original NYS tax return for 2007, petitioner did not claim one-half of the $1,203,501.00 credit.

10. Petitioner engaged Russell Saffer of Saffer & Flint Accountancy Corporation (SFAC) to prepare its NYS tax returns for 2007 and 2008, and thereafter.

11. SFAC prepared and timely filed petitioner's NYS tax return for 2008. Mr. Saffer signed this NYS tax return on September 14, 2009.

12. Petitioner's NYS tax return for 2008 claimed a credit in the amount of $601,750.00. The return included a copy of the certificate and a copy of form CT-248 (claim for Empire State film production credit).

13. Petitioner thereafter received a refund in the amount of $609,950.00 reflecting the credit in the amount of $601,750.00 for 2008.

14. Petitioner submitted a copy of an amended NYS tax return for 2007 to the Division by certified mail in June 2012.

15. The Division has no record of receiving petitioner's amended 2007 NYS tax return prior to June 18, 2012.

16. Through this amended NYS tax return for 2007, petitioner claimed a refund of the credit for the period ended December 31, 2007.

17. By letter dated August 14, 2012, the Division denied petitioner's claim for refund of the credit for the period ended December 31, 2007. The Division denied the claim because it concluded that the three-year period provided for in Tax Law § 1087 (a) to file this claim expired prior to the filing of the claim.

18. Petitioner filed amended NYS tax returns for 2009 and 2010, in August 2012. Through these amended NYS tax returns, petitioner claimed a refund of the credit for the period ended December 31, 2007.

19. By letter dated November 27, 2012, the Division denied petitioner's claim for a refund of the credit for periods ended December 31, 2009 and December 31, 2010. The Division denied these claims for refund because it concluded that the credits claimed were not for the periods ended December 31, 2009 and December 31, 2010.

20. Petitioner filed a request for a conciliation conference with the Division's Bureau of Conciliation and Mediation Services. By order dated June 5, 2015, the conciliation conferee sustained the refund claim denial letter. Thereafter, petitioner filed a timely petition with the Division of Tax Appeals.

21. Chapter 60 of the Laws of 2004 created the Empire State film production tax credit to promote film and television production in New York State. On page 13 of the October 2009 report on the Empire State film production tax credit (***see*** finding of fact 1), project 165 is listed, showing a credit in the amount of $1,203,501.00 as approved. An email from Craig Alfred, Records Access Officer of the Empire State Development Corporation, dated November 17, 2016, received in response to a Freedom of Information Law (FOIL) request, dated October 21, 2016, confirms that the feature film completed in 2007, and referenced as project 165 in the 2009 Report, is the feature film *Accidental Husband* and the applicant for project 165 is petitioner.[1]

22. In response to petitioner's claim that its amended return was filed prior to June 18, 2012, the Division conducted a search of its files to determine whether any amended return was previously filed by petitioner. By certification of the Deputy Tax Commissioner of the Division, dated May 5, 2017, no prior return was found.

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[1] The email from Mr. Alfred to petitioner's representative makes a reference to project 16, a reference that we deem to be a typographical error. The email subsequently refers to project 165 and the information stated within the email clearly refers to project 165 and not 16.

23. In order to establish that its amended NYS tax return was filed on or about January 22, 2009, petitioner submitted the affidavit of Dennis Brown, its Secretary/Vice-President. This affidavit set forth Mr. Brown's responsibility for compliance with petitioner's tax filings. Mr. Brown affirms that, when he received the amended form CT-3 from petitioner's accountant, he signed the form as Secretary and then instructed his receptionist to mail it to the Division. Mr. Brown affirms that he confirmed with his receptionist that, in fact, she did mail the amended NYS tax return as he instructed. Petitioner also submitted a cover letter from the accounting firm, dated January 22, 2009, that was attached to the amended 2007 NYS tax return.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge rejected as unsubstantiated petitioner's contention that it filed an amended 2007 tax return in January 2009. The Administrative Law Judge determined that petitioner's claim for refund of film production credit for the 2007 tax year was made by the filing of a copy of its amended 2007 return in June 2012 and was thus filed after the expiration of the period of limitations.

The Administrative Law Judge also rejected petitioner's contention that its 2008 tax return should be considered an informal claim for refund of the film production tax credit for the 2007 tax year. The Administrative Law Judge concluded that the 2008 return, including the certificate attached thereto (***see*** finding of fact 12), did not contain any notations or language that could be construed as claiming a credit or refund for 2007. In reaching this conclusion, the Administrative Law Judge determined that petitioner's claim for half of the credit on its 2008 return did not put the Division on notice of a similar credit claim for 2007. The Administrative Law Judge distinguished the facts in the present matter from other informal refund claim cases where this Tribunal found such a claim.

The Administrative Law Judge also rejected petitioner's contention that its claimed refund should be granted pursuant to the special refund authority under Tax Law §1096 (d). The Administrative Law Judge found that petitioner's failure to timely claim the refundable film production tax credit did not constitute a payment under a mistake of facts as required to establish entitlement to relief under that statute.

ARGUMENTS ON EXCEPTION

Petitioner makes the same arguments as it did before the Administrative Law Judge. That is, petitioner contends that it proved that it mailed its amended 2007 return to the Division in January 2009 and thereby timely filed its 2007 claim for the film production tax credit. Alternatively, petitioner contends that it made an informal refund claim for 2007 within the limitations period based on the totality of circumstances. Finally, petitioner asserts that it is entitled to the claimed refund pursuant to the special refund authority under Tax Law § 1096 (d). Petitioner asserts that there are no questions of fact or law regarding the film tax credit; that the Division has and continues to hold monies that have been erroneously or illegally collected from petitioner; and that its failure to timely make a formal claim for the credit was a mistake of fact.

In response, the Division asserts that petitioner failed to prove that it mailed its amended 2007 return in January 2009 as claimed. The Division notes evidence in the record indicating that no such return was ever received. The Division also contends that petitioner's 2008 tax return claiming a film production tax credit for 2008 along with a copy of the certificate attached thereto may not be construed as an informal refund claim for 2007. The Division asserts that such documents give no indication that petitioner was claiming or intending to claim a credit or refund for 2007. The Division also contends that the statute of limitations bar to the granting of petitioner's 2007 refund claim may not be overcome by the special refund authority. The

Division observes that the present matter involves a refundable credit and asserts that, as such, this matter does not involve an erroneous or illegal collection or payment under a mistake of facts and thus falls outside the parameters of the special refund authority.

OPINION

Tax Law § 24 provides for an Empire State film production credit against tax imposed under articles 9-A (corporation franchise tax) and 22 (personal income tax). The credit is available to qualified film production companies and qualified independent film production companies who meet certain criteria regarding production expenditures within New York. Such criteria are not at issue here; nor is the amount of petitioner's credit claim.

Tax Law § 24 (e) (1) directs MP/TV to allocate film production credit among qualified applicants up to an aggregate total during a given year. In 2007, the aggregate cap for the credit was $60 million (***id.***). As noted, MP/TV approved petitioner's application for the film production credit and thereby certified petitioner as eligible for a film production credit in the amount of $1,203,501.00. Where, as here, the amount of the credit is at least $1 million and less than $5 million, the credit must be claimed over two consecutive taxable years beginning with the taxable year that production is completed, with one-half of the credit amount claimed in each year (Tax Law § 24 [a] [2]).[2] Here, the certificate indicates a completion year of 2007. Accordingly, petitioner's film tax credit was allowable for its 2007 and 2008 tax years, with half allocated to each year.

[2] Where the amount of the credit is less than $1 million, it must be claimed in the completion year (Tax Law § 24 [a] [2]). For credit amounts of $5 million or more, the credit must be claimed over a three-year period beginning with the completion year, with one-third of the credit amount claimed each year (***id***.).

During the year at issue, Tax Law former § 210 (36) provided that corporate taxpayers eligible for the film production credit computed under Tax Law § 24 could apply the allowable credit against the tax imposed under article 9-A.[3] The film production credit is a refundable credit, as Tax Law former § 210 (36) also provided that any credit in excess of the fixed dollar minimum franchise tax must be treated as an overpayment to be credited or refunded to the taxpayer in accordance with Tax Law § 1086. As relevant here, Tax Law § 1086 subjects any credit or refund of overpayments to the applicable period of limitations.

Tax Law § 1087 is the statute of limitations for credit or refund claims under article 9-A. As pertinent to the present matter, that section provides that any such credit or refund claim must be filed within three years from the time the return was filed (Tax Law § 1087 [a]). That section further states that no refund shall be allowed unless a claim is filed within the prescribed period (Tax Law § 1087 [e]). We are mindful that "no matter how sympathetic the circumstances, the statute of limitations 'must be strictly adhered to' (***Kavanagh v Noble***, 332 US 535, 539 [1947] ***rehearing denied*** 332 US 850 [1948]) and is 'not open to discretionary change by the courts no matter how compelling the circumstances' (***Cohen v Pearl River Union Free School Dist.***, 70 AD2d 94, 99 [1979] ***revd on other grounds*** 51 NY2d 256 [1980])" (***Matter of Guffin***, Tax Appeals Tribunal, September 18, 2014).

As noted, petitioner contends that it filed its amended 2007 tax return, and thereby filed a formal refund claim, in January 2009. If proved, such a filing would constitute a timely refund claim under Tax Law § 1087 (a), as petitioner's original 2007 return was filed on September 15, 2008.

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[3] Tax Law former § 210 (36) was repealed pursuant to L 2014, c 59, pt A, § 15 and was effectively renumbered as Tax Law § 210-B (20) pursuant to L 2014, c 59, pt A, § 17 as part of the corporate tax reform legislation enacted in 2014.

Petitioner has not sustained its burden on this point, however, because no such amended return was delivered to the Division at or around that time. The Division certified that it searched its files and found that no amended 2007 return was filed before June 18, 2012 (***see*** finding of fact 22). This certification is prima facie evidence that no amended return was delivered to the Division (and thus filed) in or about January 2009 as claimed (Tax Law § 1091 [d]). We note that the Brown affidavit asserts that the 2007 amended return was "mailed" (***see*** finding of fact 23). As petitioner makes no claim that such mailing was made by certified or registered mail, we conclude that this assertion refers to ordinary mail. Accordingly, while the affidavit and the cover letter from the accounting firm (***id.***) may be evidence of ordinary mailing, such evidence, even if sufficient to prove that the return was *mailed*, is insufficient, as a matter of law, to prove *filing* where there is no delivery of the return (***Matter of Emerald Intl. Holdings, Ltd.***, Tax Appeals Tribunal, April 5, 2018).[4] We note that, while it is appropriate to use ordinary mail, taxpayers that do so bear the risk, however small, that the article of mail will not be delivered (***id***.).[5]

Alternatively, petitioner proposes that its 2008 return, by which it claimed the film production credit and which thereby functioned as its formal refund claim for that year, was also an informal claim for the 2007 tax year. As noted, petitioner's 2008 return includes a copy of form CT-248 and the certificate (***see*** finding of fact 12). Petitioner filed its 2008 return in or

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[4] Even assuming its relevance, petitioner's evidence of mailing is unpersuasive. Petitioner has offered no direct evidence of mailing and the fact that the Brown affidavit was made nine years after the purported facts recited therein plainly undermines its credibility.

[5] Taxpayers may protect themselves from the mishandling of an article of mail by using registered mail (***see*** Tax Law § 1091 [a] [1] [use of registered mail is prima facie evidence of delivery]).

about September 2009; that is, within the three-year limitations period commenced by the September 2008 filing of petitioner's original 2007 return.

This Tribunal has applied the federal informal refund claim doctrine to the question of whether a taxpayer has timely filed a refund claim under the Tax Law (***see Matter of Rand***, Tax Appeals Tribunal, May 10, 1990; ***see also Matter of Crispo***, Tax Appeals Tribunal, April 13, 1995 and ***Matter of Lehal Realty Assoc.***, Tax Appeals Tribunal, May 18, 1995 [informal refund claim doctrine applied to informal request for a conciliation conference and informal petition, respectively]). Pursuant to this doctrine, "courts have held that under certain circumstances, it is sufficient that the taxpayer submit a so called 'informal claim' within the statutory period, and then, outside of the limitation period, submit a formal claim" (***Donahue v United States***, 33 Fed Cl 600, 608 [1995]). We have described the informal claim rule as a compromise that allows a taxpayer to informally satisfy time restrictions for a refund claim, while also protecting the State's interest by requiring the taxpayer to follow the prescribed procedure to obtain a refund (***Matter of Greenburger***, Tax Appeals Tribunal, September 8, 1994).

An informal refund claim, i.e., one that does not conform with regulatory requirements or that contains formal defects, has three elements: (1) it must provide the taxing authority with notice that the taxpayer is asserting a right to a refund; (2) it must describe the legal and factual basis for the requested refund; (3) it must have a written component (***New England Elec. Sys. v United States***, 32 Fed Cl 636, 641 [1995] citing ***Am. Radiator & Sanitary Corp. v United States***, 162 Ct Cl 106, 113-114 [1963]). "The determination of whether a taxpayer has satisfied the requirements for an informal claim is made on a case-by-case basis and is based on the totality of the facts (citation omitted)" (***Donahue***, 33 Fed Cl at 608). The sufficiency of the written component of an informal refund claim must be considered in the context of the surrounding

circumstances (***Am. Radiator & Sanitary Corp.***, 162 Ct Cl at 114), but the writing must give the taxing authority "fair notice that a refund of taxes is sought for specified years and of the basis for the claim" (***Hollie v Commr.***, 73 TC 1198, 1213 [1980]). The ultimate question is one of notice: whether the taxing authority knew or should have known that a refund claim was being made (***see Krape v Commr.***, TC Memo 2007-125).

The documents that comprise petitioner's proposed informal refund claim for 2007 obviously meet the "written component" requirement and also clearly establish the "legal and factual basis" for the claim (***New England Elec. Sys.***, 32 Fed Cl at 641). Specifically, the certificate indicates that petitioner was eligible to claim a film production credit in the amount of $1,203,501.00 and that 2007 was the completion year of the film in question. By operation of Tax Law § 24 (a) (2), the certificate thus shows that petitioner was eligible to claim film production credit of $601,750.50 for each of the 2007 and 2008 tax years. The Division was also aware, based on its records, that petitioner did not claim such credit on its 2007 return filed in September 2008. Accordingly, with the filing of the 2008 return, the Division knew that petitioner was eligible for, and had not yet formally claimed, a film production credit of $601,750.50 for 2007. Petitioner's proposed informal claim thus clearly contains "sufficient information to enable the taxing unit to begin an investigation of the matter, if it so chooses (citations omitted)" (***Matter of Glover Bottled Gas Corp.***, Tax Appeals Tribunal, September 27, 1990).

Although a formal refund claim for a particular year generally may not be deemed an informal claim for another year (***Am. Radiator & Sanitary Corp.***, 162 Ct Cl at 114; ***Rosengarten v United States***, 149 Ct Cl 287, 294 [1960]; ***cert denied*** 364 US 822 [1960]), a determination of whether an informal claim exists depends, as noted, upon the particular facts and circumstances

of each case (***Donahue***, 33 Fed Cl at 608). Accordingly, this Tribunal has determined that a return for a particular year can be considered an informal refund claim for the immediately preceding year where the return contains sufficient information to "place[ ] the issue before the Division" (***Matter of Miles***, Tax Appeals Tribunal, September 13, 1990). In ***Miles***, this Tribunal found that a timely filed 1971 income tax return claiming a refund based in part on a reported payment of $2,235.16 in estimated taxes was an effective informal refund claim for 1970, even though the 1971 return did not identify the source of the estimated tax payments. The taxpayer's 1970 return, filed long after the 1971 return and after the limitations period for refunds for 1970, reported an overpayment of $2,235.16 to be credited toward 1971 estimated tax. We found an informal refund claim because the 1971 return put the issue of the source of the estimated payments before the Division. Here, although we do not find that the 2008 return is, by itself, an informal claim for 2007, we do find that the certificate contains sufficient information to place the issue of petitioner's 2007 film production credit claim before the Division. Accordingly, we conclude that the 2008 return, including the certificate, may be considered a part of an informal claim for 2007.

The defect in petitioner's documents, or "fatal flaw" according to the Division, is the lack of any express notice to the Division that petitioner is requesting a credit for 2007. While the certificate establishes petitioner's eligibility for the credit, it does not actually request the credit (***see*** Tax Law former § 210 [36] [a] ["A taxpayer who is eligible pursuant to section twenty-four of this chapter shall be allowed a credit . . ."]). "It is not enough that [the taxing authority] have in its possession information from which it might deduce that the taxpayer is entitled to, or might desire, a refund" (***Am. Radiator & Sanitary Corp.***, 162 Ct Cl at 114; ***see also Barenfeld v United States***, 194 Ct Cl 903, 912 [1971] ["[the taxing authority] is not required to weigh

circumstantial evidence to determine whether a taxpayer is asking for a tax refund"]). On its face, then, petitioner's proposed informal claim would seem to lack "the most basic requirement of a claim - advising the [taxing authority] that a refund is being sought" (***Hollie v Commr.***, 73 TC at 1214).

Our inquiry into the existence of an informal claim does not end with an examination of the four corners of the proffered documents, however. As noted, the sufficiency of the written component of an informal claim must be considered in the context of the surrounding circumstances (***Am. Radiator & Sanitary Corp.***, 162 Ct Cl at 114). Indeed, "[a]n informal [refund] claim develops through a course of conduct which consists of various elements" and may include information gathered during an audit, before any tax is formally assessed (***New England Elec. Sys.***, 32 Fed Cl at 643). Moreover, such information need not be in writing (***id.***).

In ***New England***, the taxpayer's representative made oral statements to the Internal Revenue Service agent during the audit indicating that the taxpayer "reserved the right" to file a protective refund claim and that it "may" file a protective claim with respect to an investment tax credit issue that arose during an audit (***id.*** at 642). Such statements were memorialized by the agent in written reports (***id.***). The taxpayer also provided a written statement in response to a notice of proposed adjustment indicating that it did not agree to the agent's decision with respect to the investment tax credit issue (***id.***). The court determined that these statements were properly interpreted as "a claim to a right to a future refund" and concluded, accordingly, that the taxpayer filed an informal refund claim (***id.*** at 643).

The film production credit application process in the present matter is analogous to the audit in ***New England***. In each situation, a taxpayer sought to establish a tax position to the appropriate governmental authority. In ***New England***, the taxpayer asserted a right to an

investment tax credit to an auditor. Here, petitioner sought to substantiate its right to the film production credit through the application process. As noted, that process begins with an initial application, which includes a projection of the motion picture's budget, estimates of shooting days and expenditures within and without New York, in order to obtain conditional eligibility for the credit (***see*** finding of fact 1). Following the film's completion, the applicant must provide MP/TV with its actual production expenses, as well as a payroll report, a cast and crew list, and daily production reports (***id.***). The certificate represents the successful completion of the application process. Although petitioner did not apply to the Division to become eligible to claim the credit and, hence, the Division did not review petitioner's application, the Division was aware of the particulars of the film production credit application process, as it jointly issued the report describing that process (***id.***). The Division thus was aware that applicants must substantiate their claims to MP/TV's satisfaction in order to obtain a certificate. In our view, such awareness is properly considered in determining whether the Division knew or should have known that a claim for film production credit was being made (***see Krape v Commr.***, TC Memo 2007-125; ***cf. Matter of Tsoumas***, Tax Appeals Tribunal, June 15, 2017 [lack of notice to the Bureau of Conciliation and Mediation Services cited as a factor in determining the sufficiency of an informal request for conciliation conference]). Furthermore, given the extensive nature of the application process, we think that petitioner's course of conduct in successfully applying for the film production credit at issue is reasonably interpreted as "a claim to a right to a future refund" (***New England Elec. Sys.***, 32 Fed Cl at 643).

We note also that the purpose of the notice requirement for informal refund claims is to enable the government to "make financial provision for the possible refund" (***Matter of Lehal Realty Assoc.*** citing ***Mercury Mach. Importing Corp. v City of New York***, 3 NY2d 418, 426

[1957], ***rearg denied*** 3 NY2d 942 [1957]). In the present matter, this purpose has been fulfilled, as petitioner's claimed film production credit for 2007 was included in the $60 million aggregate total for such credits for that year (***see*** Tax Law § 24 [e] [1]) and was listed in the 2009 report on the Empire State film production tax credit (***see*** finding of fact 21).

Accordingly, pursuant to the foregoing discussion, and under the particular circumstances of this case, we find that petitioner's 2008 return, including the form CT-248 and the certificate, together with petitioner's course of conduct in applying for and gaining eligibility for the credit, is properly deemed an informal claim for film production credit for 2007.

Petitioner's informal claim for credit or refund for the 2007 tax year, as described above, was filed in September 2009, within the three-year limitations period commenced by the filing of petitioner's original 2007 return, which was filed on September 15, 2008. Petitioner's informal claim was therefore timely filed and was later perfected by the filing of its 2007 amended return in June 2012.

Although the Division denied petitioner's 2007 refund claim as untimely and did not address the merits of the claim, the Division granted petitioner's 2008 film production credit claim in full (***see*** finding of fact 13). The Division thus did not contest MP/TV's award to petitioner of $1,203,501.00 in film production credit to be claimed, in accordance with Tax Law § 24 (a) (2), over the 2007 and 2008 tax years. Accordingly, as petitioner's 2007 claim for credit has been deemed timely, it must be granted.

Given the resolution of the informal refund claim issue, we do not address the special refund authority issue.

Finally, we note that the parties' briefs cite several administrative law judge determinations in support of their respective positions. Administrative law judge determinations are not to be

cited, are not precedential, and are not to be given any force or effect in any other proceeding (Tax Law § 2010 [5]). We have thus neither reviewed nor considered such determinations in rendering our decision in the present matter.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Accidental Husband Intermediary, Inc. is granted;

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

3. The petition of Accidental Husband Intermediary, Inc. is granted; and

4. The Division of Taxation is directed to grant to petitioner an Empire State film production credit in the amount of $601,750.50 for the 2007 tax year; to apply such credit to petitioner's tax liability under article 9-A for that year; and to refund to petitioner the resulting overpayment in accordance with Tax Law former § 210 (36).

DATED: Albany, New York
April 11, 2019

s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Anthony Giardina
Anthony Giardina
Commissioner