STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ADIRONDACK BANK	:	DETERMINATION DTA NO. 825101
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 October 18, 2007 through December 22, 2009.	:	

Petitioner, Adirondack Bank, filed a petition 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 October 18, 2007 through December 22, 2009.

On October 16, 2013, the Division of Taxation, appearing by Amanda Hiller, Esq. (Lori P. Antolick, Esq., of counsel), and petitioner, appearing by State Tax Refund Service (Richard T. Rainar, CPA) and Herold Law, P.A. (Peter E. Iorio, Esq., of counsel, on brief), waived a hearing and submitted this matter for determination based on documents and briefs to be submitted by February 24, 2014, which date commenced the six-month period for issuance of this determination. After due consideration of the documents and arguments submitted, Herbert M. Friedman, Jr., Administrative Law Judge, renders the following determination.

ISSUES

I. Whether the Division of Taxation properly denied petitioner's claim for refund of sales and use taxes paid on the purchase and installation of a security system, pump for an HVAC

system, and blacktop on the basis that such purchases and installation did not constitute capital improvements.

II. Whether the Division of Taxation properly denied petitioner's claim for refund of sales and use taxes paid on the purchase of purported internet access services from Verizon.

III. Whether the Division of Taxation properly denied petitioner's claim for refund of sales and use taxes paid on purported promotional materials.

FINDINGS OF FACT

1. Petitioner, Adirondack Bank, is a full-service banking corporation with its main office in Utica, New York, and branch offices throughout New York State.

2. Between December 10, 2007 and November 2, 2009, Sentinel Security & Communication, Inc., of New Hartford, New York (Sentinel), installed various security items at several of petitioner's branches. According to invoices provided on audit, Sentinel installed a "new system" and "security/fire/cctv" at the Ilion branch. In addition, a reader was replaced at the Lake Placid branch. Outdoor and dome cameras were installed at the Little Falls, Mohawk, Utica, and Boonville branches. The invoices list the type of item installed, but do not provide any further description of the work performed. They do not indicate whether interior wiring was required. They also list the following charges for the service and materials provided:

Date of Service	Branch	Charge
November 2, 2009	Boonville	$750.00
October 6, 2008	Ilion	$15,000.00
October 28, 2008	Ilion	$12,500.00
March 30, 2009	Little Falls, Mohawk, Utica	$2,350.00
December 10, 2007	Lake Placid	$590.00

A total of $2,715.25 in sales tax was paid for these installations.

3. On February 19 and 20, 2009, J. Hogan Refrigeration & Mechanical, Inc., of Peru, New York (J. Hogan), replaced a pump on a condenser at petitioner's Saranac Lake branch. The invoice for this transaction identifies the purchase and installation of a "B & E Pump #90," among other parts. Again, the invoice does not provide any description of the work performed other than the type of item installed. Petitioner did not present any other evidence with regard to installation of this item. The invoice lists a taxable subtotal of $4,299.06, and sales tax of $343.93 was paid by petitioner for this work.

4. On July 9, 2008, Nathaniel Weigand Builders (Weigand) performed construction services at the Rome branch of petitioner. The receipt for this transaction identifies the project as "rework curb area in drive thru." It also has entries reading "entrance remove and replace blacktop - rework whole area" and "drive thru corner - remove curb, repair handrail, blacktop." There is no further description on the receipt of the work performed. The receipt indicates that the cost of service and materials provided was $5,671.00. Sales tax of $496.21 was paid by petitioner for this work.

5. Petitioner received data line services from Verizon during the 26-month period in issue. The record contains only four partial billing statements from Verizon, those dated October 4, 2007, October 7, 2007, December 16, 2007, and January 16, 2008 (Verizon Bills). Each of the Verizon Bills is missing at least one page. Additionally, on the first page of each of the Verizon Bills is a handwritten entry identifying the bill as "data line charges" for various branches. It is unclear as to who wrote these entries. Each of the Verizon Bills covers a one-month period. There are numerous charges on the Verizon Bills, including entries for frame relay circuits. It is unclear what some of the other entries signify. The total amount of taxes listed as paid on the

Verizon Bills was $1,525.45. Petitioner also submitted a self-prepared summary list of all taxes claimed to have been paid to Verizon for data line charges during the period for which a refund is sought. That summary totaled $16,225.16.

6. Petitioner placed into the record the affidavit of Robert Bruzgulis, its Vice-President, Director of Information Services. Mr. Bruzgulis avers that he has personal knowledge of the facts relating to taxes paid by petitioner on the Verizon Bills. He states that none of the data lines from Verizon included Voice Over Internet Protocol (VOIP). Instead, he points out, petitioner uses a traditional Modular Integrated Communications Systems (MICS) telephone system. Mr. Bruzgulis adds that all of the internet access services from Verizon were solely for the transmission of data, and that each of the circuits he reviewed were used for point-to-point data communication among petitioner's branches.

7. In addition, petitioner placed into the record a series of e-mails dated December 22, 2011, between Christina Halikiopoulos, an account manager with Verizon Business, and Melynda Perry of State Tax Refund Service, petitioner's representative. In the first e-mail between the two, Ms. Perry sought clarification that the data circuits purchased by petitioner were strictly for transmitting data and did not include voice or video transmission. Also, Ms. Perry sought an explanation as to why the data lines were taxed and whether they should continue to be taxed. In a responsive e-mail, Ms. Halikiopoulos stated that "I cannot tell you what the customer uses the circuit for. Only that it is a data circuit. Verizon does not monitor the traffic or type of traffic over the circuit." As for Ms. Perry's second question, Ms. Halikiopoulos could not provide an answer. Attached to the aforementioned e-mails was another undated e-mail from Ms. Halikiopoulos to Ms. Perry identifying accounts numbered "315S290811953258," "315S260023," and "000743698190" as data circuits.

8. Between September 30, 2008 and November 30, 2009, petitioner purchased, on a monthly basis, various items such as labels, debit cards, and envelopes from a company named Fiserv.[1] The invoices provided on audit name the items purchased, but contain no further description of them. There are no photographs, examples, or other identification of the items in the record. Moreover, the Fiserv receipts include charges for "PIN POSTAGE," "MAIL LISTING,"and "CARD PRODUCTION SET UP," none of which are further explained in the record. Sales tax of $3,696.89 was paid by petitioner for the items purchased from Fiserv.

9. On October 15, 2008 and October 8, 2009, petitioner received software support services from SRS Systems Inc. (SRS) of Syracuse, New York. The amount of sales tax paid on these services remaining at issue at the time the petition was filed was $90.56.

10. On October 15, 2010, petitioner filed an application for credit or refund with the Division of Taxation (Division) seeking a refund of sales and use taxes paid during the period from October 25, 2007 through December 22, 2009 in the amount of $99,970.91. Petitioner claimed a refund for taxes paid on four groups of transactions that it maintained were exempt:

a. the installation of security systems by Sentinel, the pump for an HVAC system by J. Hogan, and blacktop at various branches by Weigand, all of which petitioner maintained constitute capital improvements;

b. the provision of internet access service by Verizon to various branches;

c. the purchase of computer software support; and

d. the purchase of promotional materials from Fiserv.

[1] The invoices in the record evidence that at some point during the period at issue, Fiserv became known as Personix.

11. On February 24, 2011, after a field audit, the Division granted petitioner a refund in the amount of $5,535.40, but denied the remaining $94,435.51 of petitioner's refund claim. The denial letter stated, in pertinent part, as follows:

> The denied portion comes from jobs you believe to be Capital Improvement [sic] projects but didn't meet the three qualifications to qualify as a capital improvement. The rest of the deined [sic] portion is from taxable telecommunication services, canned software, and purchases that don't qualify as promotional materials.
>
> * * *
>
> The net refund amount comes from projects that qualify as capital improvements, exempt services, and printed promotional materials.

12. On April 20, 2012, the Bureau of Conciliation and Mediation Services (BCMS) issued a conciliation order recomputing the Division's refund denial and granting a refund to petitioner in the amount of $30,174.55. The conciliation order does not identify any particular item that served as the basis for the refund.

13. Petitioner filed a petition on July 5, 2012, in which it reduced the amount of its remaining refund claim to $22,233.23.[2] A schedule listing the components of that claim was placed into the record. It breaks down the remaining refund claim as follows:

Contractor	Item(s) Purchased	Sales Tax Paid
J. Hogan	B&E Pump	$343.93
Weigand	Blacktop	$496.21
Sentinel	Security System	$1,380.48
Verizon	Internet Access	$16,225.16
SRS	Computer Software Support	$90.56
Fiserv	Promotional Materials	$3,696.89
TOTAL		$22,233.23

[2] The parties placed into evidence an amended petition dated January 3, 2013, in which the amount of tax contested was increased to $52,407.80. Subsequently, petitioner informed the Division of Tax Appeals by letter of January 15, 2013 that it was withdrawing the amended petition. This letter was not introduced by the parties as part of their submission, but is part of the file of the Division of Tax Appeals and, therefore, is included in the record by official notice pursuant to State Administrative Procedures Act § 306(4). Further, petitioner, in its brief, confirms that it is only seeking a refund in the amount of $22,233.23. As a result, the latter figure is the amount at issue here.

14. Petitioner did not place into the record any affidavits or other testimony regarding the security system, B & E pump, blacktop, or materials purchased from Fiserv.

SUMMARY OF THE PARTIES' POSITIONS

15. Petitioner maintains that it should be granted a refund of sales tax paid on the installation of security systems, the B&E pump, and blacktop at its various branches as those projects constitute capital improvements exempt from taxation. Additionally, petitioner argues that a refund of sales tax is appropriate for the internet access services provided by Verizon. Finally, petitioner seeks a refund of the sales tax paid on the purchase of printed promotional materials from Fiserv.

16. The Division asserts that the refund claims were properly denied as petitioner has failed to meet its burden of proof on each of the refund claim areas. The Division concedes in its brief, however, that petitioner is entitled to a refund of $90.56 for sales tax paid on the SRS software support invoices.

CONCLUSIONS OF LAW

A. Tax Law § 1132(c)(1) sets forth a presumption that all sales receipts for tangible personal property, as well as from installation, maintenance, servicing or repair of tangible personal property mentioned in Tax Law § 1105(a), (b), (c), and (d), are subject to tax "until the contrary is established," and sets the burden of proving the contrary upon the vendor or its customer (***see also*** 20 NYCRR 532.4[a][1]; [b][1]). Therefore, the burden here is on petitioner to establish by clear and convincing evidence that products and services purchased are not taxable and that the refund denial was erroneous (***see Matter of MacLeod***, Tax Appeals Tribunal, July 3, 2008, ***confirmed*** 75 AD3d 928 [2010]).

The Capital Improvement Claims

B. Tax Law § 1105(c)(3) imposes sales tax on the receipts from every sale, except for resale, of the service of installing tangible personal property, except for installing property which, when installed, will constitute a capital improvement to real property. The term "capital improvement" is defined in Tax Law § 1101(b)(9)(i) as:

> An addition or alteration to real property which:
>
> (A) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and
>
> (B) Becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and
>
> (C) Is intended to become a permanent installation.

Charges for mere repair or maintenance are not tax exempt (Tax Law § 1105[c][5]).

It has been observed that the question of whether an improvement to realty constitutes a capital improvement "must be decided on a case-by-case basis" (***Matter of Gem Stores, Inc.***, Tax Appeals Tribunal, October 14, 1988). A taxpayer must show that each element of the statutory test is met in order to show a prima facie entitlement to the capital improvement exemption (***see Rochester Gas and Elec. Corp. v. State Tax Commn.***, 128 AD2d 238 [1987]; ***Flah's of Syracuse v. Tully***, 89 AD2d 729 [1982]). Therefore, it is necessary to consider each improvement claimed by petitioner with respect to the established criteria.

C. First, petitioner seeks a refund for sale taxes paid on the installation of security system equipment by Sentinel. As noted, the initial requirement is that the addition or alteration add to the value of the real property or prolong the useful life of the real property. In examining whether this criterion has been satisfied, the Tax Appeals Tribunal has examined the purchase

and installation expenses incurred and has indicated that if the purchase and installation costs were substantial, i.e., in excess of several thousand dollars, the equipment substantially added to the value of the property (***see Matter of Amusements of WNY, Inc.***, Tax Appeals Tribunal, May 26, 2011; ***Emery Air Freight Corp.***, Tax Appeals Tribunal, October 17, 1991; ***Matter of Dairy Barn Stores, Inc.***, Tax Appeals Tribunal, October 5, 1989). In the instant case, the security system projects at the Ilion branch appear to have cost slightly more than $27,000.00. With purchase costs that high, they are deemed to have substantially added to the value of petitioner's properties (***see Matter of Dairy Barn Stores, Inc.***). Meanwhile, the costs of the remaining security system projects combined do not exceed $5,000.00 and, thus, petitioner has not shown that they meet the first prong of the test.

Similarly, the proof offered on the purchase and installation of the B & E pump and blacktop does not reach the level necessary to meet the first criterion. The B & E pump itself, additional parts, and labor cost petitioner $4,299.06, while the blacktop installation was $5,671.00. Petitioner offered no further evidence to support its position. Hence, neither of these projects was of the nature or expense to substantially add to the value of petitioner's properties.

D. The second criterion to be met in order for an addition or alteration to be considered a capital improvement is that the addition or alteration "[b]ecomes a part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or to the article itself" (Tax Law § 1101[b][9][i][B]). If an item is so attached that its removal would cause substantial damage to the item or the real property, the second requirement is met (***see e.g. Matter of Flah's of Syracuse, Inc. v. Tully*** [improvements which were bolted, nailed and glued to the real property were permanently affixed thereto]). However, the claim of damage must be supported by evidence (***see Matter of Gem Stores, Inc***).

In the case at bar, it is obvious that attempted removal of the blacktop installation would cause such damage and, thus, that project meets the second prong. Petitioner, though, has failed to prove that the security system items or B&E pump were permanently affixed. There was no testimony, affidavit, photograph or description offered in the record whatsoever regarding the nature of the security system installation by Sentinel.[3] It is, therefore, unclear how the various security items were installed and what damage, if any, would result from their removal. Petitioner failed to establish that the system was wired into the realty. Likewise, the record is devoid of evidence describing the installation of the B & E pump and the effect, if any, of its removal. Consequently, petitioner failed to adduce sufficient evidence to meet its burden of proof on this second prong of the test (***see Matter of A. Colarusso and Son, Inc.***, Tax Appeals Tribunal, June 23, 2011).

E. Third, petitioner must demonstrate that the improvement "[i]s intended to become a permanent installation" (Tax Law § 1101[b][9][i][C]). Here, it is necessary to determine petitioner's intention of making the security system or B & E pump a permanent installation (Tax Law § 1101[b][9][iii]). The controlling intent is not petitioner's secret or subjective intention at the time the units were acquired, but rather the intention the law objectively will deduce from all the circumstances at the time the property is annexed to the realty to see whether it may fairly be found that the purposes of the annexation was to make the unit a permanent part of the freehold (***see Voorhees v. McGinnis***, 48 NY 278 [1872]; ***Marine Midland Trust Co. v. Ahern***, 16 NYS2d 656 [Sup Ct, Broome Cty 1939] citing ***Potter v. Cromwell***, 40 NY 287 [1869]). Factors to be

[3] The record does contain a printout from the internet website "linearcorp.com" describing various system keypads and readers. The Sentinel invoice for the installation of a reader at the Lake Placid branch does not identify which of the numerous readers described in the aforementioned printout was actually installed, nor does the record contain an affidavit addressing that question.

considered in deciding whether the annexation was intended to be permanent include: the nature of the article annexed, the mode of annexation, the relation to the property of the person making the attachment, and the applicability and application of the unit to the use to which the property is being put (***see Matter of Amusements of WNY, Inc.***).

Applying these principles to the present case, it is determined that petitioner has failed to demonstrate, based on this record, that the security system, B&E pump, and blacktop were intended to be permanent. Again, petitioner offered little evidence regarding the nature of the installations. There are no photographs, testimony, affidavits or other descriptions attesting to the mode of annexation. Petitioner did not offer proof that the security systems or B&E pump at issue were permanently affixed to the real property so that removal would cause material damage to both the building and the systems themselves. Although the blacktop is arguably permanent, the sparse evidence suggests that project was a repair to certain sections and not a complete repaving of the driveway. Specifics are very important in order to make a determination of whether something is a capital improvement (***see Matter of MacLeod***). The necessary specifics are missing here and, thus, petitioner's claims fail to satisfy the third prong of the test.

F. Petitioner points to the Division's own Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property, Publication 862, for support of its position that the security system constitutes a capital improvement. In Publication 862, however, the Division allows as a capital improvement "[i]n-wall installations of electrical wiring and communications cables in connection with the installation of burglar alarms or security systems." In the instant case, petitioner has failed to show that the system installed involved in-wall wiring or cables. As noted, the record completely lacks evidence of the method of installation of the systems. Therefore, petitioner's reliance on Publication 862 is inapt with regard to the security system.

G. Meanwhile, Publication 862 undermines petitioner's claim concerning the blacktop. Publication 862 unambiguously describes as repair or maintenance, and not a capital improvement, "replacing sections of concrete or blacktop driveways, parking lots, and walks." As noted, what little evidence that is present in this record suggests that the blacktop project by Weigand was a repair to portions of the Rome branch's driveway and not a complete overhaul.[4]

H. Thus, petitioner has failed to demonstrate that the installation of the security system items, B&E pump, and blacktop qualify as capital improvements and petitioner's claim for refund with respect to those installations is denied.

The Internet Access Claims

I. Petitioner also seeks a refund of $16,225.16 of sales tax it claims it erroneously remitted to Verizon for internet access services. Tax Law § 1115(v) provides:

> [r]eceipts from the sale of Internet access service, including start-up charges, and the use of such service, shall be exempt from the taxes imposed under this article. For purposes of this subdivision, the term "Internet access service" shall mean the service of providing connection to the Internet, but only where such service entails the routing of Internet traffic by means of accepted Internet protocols. The provision of communication or navigation software, an e-mail address, e-mail software, news headlines, space for a website and website services, or other such services, in conjunction with the provision of such connection to the Internet, where such services are merely incidental to the provision of such connection, shall be considered to be part of the provision of Internet access service.

Again, in order to meet its burden, petitioner must demonstrate through clear and convincing evidence that the exemption applies and that it is entitled to it (***see Matter of Lake Grove Entertainment, LLC v Megna***, 81 AD3d 1191 [2011]; ***Matter of Blue Spruce Farms v New York State Tax Commn.***, 99 AD2d 867 [1984], ***affd*** 64 NY2d 682 [1984]). A close

[4] The Weigand invoice reads "entrance remove and replace blacktop" and "rework whole area." It is unclear whether this simply means the entrance area or the entire parking area. These potentially conflicting statements are unexplained by petitioner and hamper its case.

examination of the record shows that petitioner does not meet this burden with regard to the internet access claims.

The period in question in this case is 26 months long. On this issue, though, the record solely contains the Verizon Bills, which are nothing more than 4 incomplete monthly invoices, thereby leaving 22 months of substantiation unaccounted for. Moreover, the Verizon Bills have several unexplained entries. Petitioner did not introduce any testimony or affidavits to clarify the invoices other than the affidavit of its vice-president, Mr. Bruzgulis, who simply averred that petitioner's phone service was traditional MICS system and not VOIP, and that each of the circuits was used for point-to-point data communication among its branches. Crucially, he did not address the meaning of many of the entries on the Verizon Bills. Furthermore, the total amount of taxes paid on the Verizon Bills in evidence totaled $1,535.45, far less than the $16,225.16 refund sought. In sum, these scant, incomplete and unexplained records do not allow petitioner to clearly and convincingly demonstrate that it is entitled to the claimed exemption for internet access services during the period at issue.

The Printed Promotional Materials Claims

J. Petitioner also seeks a refund of $3,696.89 in previously paid sales tax on what it claims were exempt promotional materials under Tax Law § 1115(n)(4). That statute states:

> notwithstanding any contrary provisions of paragraph one of this subdivision, promotional materials which are printed materials and promotional materials upon which services described in paragraph two of subdivision (c) of section eleven hundred five have been directly performed shall be exempt from tax under this article where the purchaser of such promotional materials mails or ships such promotional materials, or causes such promotional materials to be mailed or shipped, to its customers or prospective customers, without charge to such customers or prospective customers, by means of a common carrier, United States postal service or like delivery service.

Accordingly, to qualify for the exemption granted by Tax Law § 1115(n)(4), petitioner must prove that the items: (i) were purchased by petitioner; (ii) meet the definition of promotional materials; (iii) were printed materials; (iv) were provided to customers or prospective customers without charge; and (v) are shipped to such customers by means of a common carrier or like delivery service.

In the case at bar, it is uncontroverted that the items were purchased by petitioner. On the remaining elements, however, petitioner overwhelmingly fails to adduce sufficient evidence to carry its burden of proof. First, Tax Law § 1101(b)(12) defines "promotional materials" for purposes of the sales tax, in relevant part, as:

> Any advertising literature, other related tangible personal property (whether or not personalized by the recipient's name or other information uniquely related to such person) and envelopes used exclusively to deliver the same. Such other related tangible personal property includes, but is not limited to, free gifts, complimentary maps or other items given to travel club members, applications, order forms and return envelopes with respect to such advertising literature, annual reports, prospectuses, promotional displays and Cheshire labels but does not include invoices, statements and the like.

As a result, petitioner must establish that the supplies at issue meet the definition of either "advertising literature" or "related tangible personal property." The record, however, does not contain any examples or detailed descriptions of the items in question. First, the invoices that were provided lack detailed description. Moreover, petitioner did not place into evidence examples or photographs of the envelopes, labels, forms, cards, or other materials to support its exemption claim (***see e.g. Matter of United Parcel Service, Inc. v. Tax Appeals Tribunal***, 98 AD3d 796 [2012], ***lv denied*** 20 NY3d 860 [2013][where taxpayer was entitled to the exemption after introducing as evidence numerous examples of the relevant items]). Indeed, petitioner did

not even offer an affidavit on the issue, a fact that must be held against it (***see Matter of Meixsell v. Commissioner of Taxation***, 240 AD2d 860 [1997], ***lv denied*** 91 NY2d 811 [1998]; ***Matter of Greenwald***, Tax Appeals Tribunal, November 24, 1993). Hence, it is hardly clear that the items meet the statutory definition of promotional materials.

Moreover, the dearth of evidence causes petitioner to fail to prove that the items in question were provided to customers or prospective customers without charge and shipped to such customers by means of a common carrier or like delivery service. The bare-bones purchase invoices in the record reflect that petitioner paid a postage charge to Fiserv when it purchased the materials. There is no evidence, though, demonstrating when, how, and under what circumstances the items were mailed or shipped, if at all, to petitioner's customers. Petitioner attempts to cure this problem by making several factual assertions to this effect in its brief, but the Tax Appeals Tribunal has cautioned that such unsworn statements are insufficient for petitioner to meet its burden of proof (***see Matter of Café Europa,*** Tax Appeals Tribunal, July 13, 1989). As a result, petitioner's claim for a refund on the sales tax paid on the claimed promotional materials must also fail.

K. In its brief, the Division concedes that petitioner is entitled to a refund of $90.56 for sales tax paid on the SRS software support invoices. Consequently, that portion of petitioner's refund claim is granted.

L. It is well-settled that 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]). This case is laden with such uncertainty and, as a result, petitioner has failed to meet its requisite burden with sufficient evidence.

M. The petition of Adirondack Bank is granted to the extent indicated in Conclusion of Law K. The Division of Taxation is directed to refund to petitioner the amount of $90.56, plus applicable interest. In all other respects the petition is denied, and the refund denial, as modified by the conciliation order of April 20, 2012, is sustained.

DATED: Albany, New York
August 7, 2014

/s/ Herbert M. Friedman, Jr.
ADMINISTRATIVE LAW JUDGE