

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
GLOBAL FOUNDRIES U.S., INC. : ORDER
For Refund of Corporation Franchise Taxes under Article : DTA NO. 829184
9-A of the Tax Law for the Years 2012 and 2014. :
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Petitioner, Global Foundries U.S., Inc., filed a petition for a refund of corporation franchise taxes under article 9-A of the Tax Law for the tax years 2012 and 2014.

On February 12, 2020, the Division of Taxation, appearing by Amanda Hiller, Esq. (Bruce D. Lennard, Esq., of counsel), filed a motion for partial summary determination on the ground that petitioner's claim for refund for the year 2012 was untimely. On March 5, 2020, petitioner, appearing by Greenberg Traurig, LLP (Glenn Newman, Esq., and Harold Iselin, Esq., of counsel), filed its opposition to the motion. The Division of Taxation, with permission, filed its reply on May 5, 2020. Petitioner had until May 27, 2020, within which to file its sur-reply, which date commenced the 90-day time frame to issue this order. After due consideration of the documents and arguments submitted, Donna M. Gardiner, Administrative Law Judge, renders the following order.

ISSUE

Whether the Division of Taxation has established that there are no material and triable issues of fact such that, as a matter of law, partial summary determination can be made in its favor.

FINDINGS OF FACT

1. Petitioner, Global Foundries U.S., Inc., operates a manufacturing facility within a designated Empire Zone in Malta, New York.
2. On February 19, 2019, petitioner filed a petition with the Division of Tax Appeals that seeks a refund of corporation franchise taxes under article 9-A.
3. On April 10, 2019, the Division of Taxation (Division) filed its answer to the petition. Subsequently, the Division filed an amended answer on May 1, 2019.
4. Petitioner seeks a refund of Empire Zone Investment tax credits (EZ-ITCs) in the amount of \$219,684,307.00 for its taxable years 2012 and 2014. Specifically, the refund claimed for taxable year 2012 is \$67,332,149.00 and the refund claimed for taxable year 2014 is \$152,352,128.00.
5. Petitioner's refund claim for a total of \$219,684,307.00 was made by its filing of an amended 2014 CT-3, general business corporation franchise tax return, signed and dated July 18, 2018. The Division issued a refund denial letter dated August 10, 2018.
6. In its refund denial letter, the Division stated that 50% of petitioner's carryover EZ-ITCs for taxable years 2012 and 2014 had been refunded as overpayments of tax and it concluded that petitioner was not entitled to any additional refunds. Additionally, the Division concluded that, because petitioner was refunded 50% of its EZ-ITC available to be carried forward, no amount was deferred and the claim for refund for the 2012 tax year was untimely.
7. Petitioner claims that the Division was aware that it intended to submit the refund claim since it was aware of the amounts expended by petitioner on capital projects which formed the basis for the credits provided in the Tax Law. According to petitioner, the Division has audited

every tax return filed by petitioner since 2010 and has approved such credits for the years in issue.

8. Petitioner asserts that an informal refund claim had been made and the Division had all of the information necessary to identify the amount and verify the tax credits available.

CONCLUSIONS OF LAW

A. As provided in section 3000.9 (b) (1) of the Rules of Practice and Procedure of the Tax Appeals Tribunal, a motion for summary determination “shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented.” “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557 [1980]). As summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is “arguable” (*Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572, 573 [2d Dept 1989]).

B. In this case, the Division has moved for partial summary determination for the tax year 2012 only, asserting that petitioner’s claim for refund was untimely. The Division argues that petitioner submitted its refund claim, for the first time, as part of its amended 2014 form CT-3, that was signed and dated on July 18, 2018. Petitioner, on the other hand, argues that it made an informal refund claim prior to its filing of the amended 2014 form CT-3.

As set forth in *Matter of Accidental Husband Intermediary, Inc.* (Tax Appeals Tribunal, April 11, 2019), an informal claim for refund 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; and (3) it must have a written component (see *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]). In considering a claim pursuant to the informal refund claim 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]). “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]” (*id.*). Therefore, the question of whether petitioner made an informal refund claim for 2012 involves a review of material and triable issues of fact that necessitate a hearing.

C. The Division of Taxation’s motion for partial summary determination is denied and the formal hearing will proceed as scheduled addressing the entirety of the petition.

DATED: Albany, New York
August 13, 2020

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE