STATE OF MICHIGAN

COURT OF CLAIMS

UNITED STATES STEEL CORP,

Plaintiff,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant.
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OPINION AND ORDER

Case No. 21-000129-MT

Hon. Brock A. Swartzle

At issue in this matter filed under the Revenue Act, MCL 205.1 *et seq*., is the amount of interest owed on the refund paid to plaintiff United States Steel Corp. Interest on a refund begins to accrue 45 days after a taxpayer files a petition for a refund with defendant Department of Treasury under MCL 205.30. Plaintiff moves for summary disposition under MCR 2.116(C)(10), arguing that it first filed a claim or petition for a refund on October 17, 2018, meaning that the date on which interest should have begun to accrue is significantly earlier than the date identified by defendant. Defendant, meanwhile, argues that plaintiff did not make a claim for refund until July 27, 2020, when it requested an informal conference.

Because the Court agrees with defendant that plaintiff first made a claim for refund on July 27, 2020, plaintiff's motion for summary disposition is DENIED. In addition, because it appears to the Court that defendant, as the nonmoving party, is entitled to judgment, summary disposition is GRANTED to defendant as allowed under MCR 2.116(I)(2). This matter is being decided without oral argument as permitted by Local Rule 2.119(A)(6).

I. BACKGROUND

This matter is before the Court once again on summary disposition. The opinion and order issued by predecessor Judge Colleen A. O'Brien sets forth many of the pertinent facts.[1] As a result, and given that the facts are well-known by the parties at this point, this Court's opinion will eschew a lengthy recitation of the facts in favor of a more focused approach.

Defendant conducted an audit of plaintiff's tax returns filed under the Corporate Income Tax Act (CITA) in May 2018.[2] One of the issues at the time was whether U.S. Steel Holdings, which was a subsidiary of plaintiff, should be included in plaintiff's unitary business group (UBG) as that term is defined under MCL 206.611(6). In late 2018, plaintiff's representative, Mashawn Lorenz, informed Elaine Van Buskirk, defendant's audit supervisor, that plaintiff believed it had mistakenly omitted U.S. Steel Holding from its UBG. The inclusion of U.S. Steel Holdings in the UBG would have reduced plaintiff's business income because of losses incurred by the subsidiary.

On October 17, 2018, Lorenz sent an email to Van Buskirk with the subject line "RE: [External]-RE: Status of Audit." The email, which discussed U.S. Steel Holdings, is referred to by the parties as the "Holdings Memo," and is critical to plaintiff's assertions in this case. The memo begins with Lorenz's assertion, "I believe we should have included U.S. Steel Holdings Inc. in our 2013 Michigan CIT Unitary Business Group." According to the memo, "the issue is whether" U.S. Steel Holdings was considered a "foreign operating entity" under MCL 206.607(3).

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[1] The Court denied defendant's motion for summary disposition under MCR 2.116(C)(8) because the allegations contained in the complaint were, when accepted as true, adequate for plaintiff to state a claim for relief.

[2] At the time, it was alleged that plaintiff owed a deficiency; however, as will be noted, plaintiff in fact overpaid its tax liability by approximately $4,743,285.75.

Lorenz concluded that U.S. Steel Holdings was not a foreign operating entity "because it does not meet subsection (c) of MCL 206.607(3)" for the reason that less than 80% of its income was "attributable to active foreign business income derived from sources outside of the United States." And because U.S. Steel Holdings was not a foreign operating entity, Lorenz believed that it "therefore should be included in U.S. Steel's UBG for purposes of the Michigan 2013 CIT" return. The message concluded with Lorenz asking Van Buskirk, "Please let me know what you think." The memo did not, however, explain the effect that the inclusion of U.S. Steel Holdings in plaintiff's UBG would have on plaintiff's CIT liability. Nor did the memo contain an express request for a refund.[3]

Lorenz and Van Buskirk spoke by telephone shortly after Lorenz sent the Holdings Memo by email. The parties' documentary evidence presents conflicting accounts of their discussions on the call. An affidavit from Lorenz contains averments in which she states that she recalled asking what needed to be done to request a refund as a result of adding U.S. Steel Holdings to the UBG. Van Buskirk, meanwhile, averred that she and Lorenz discussed the foreign-entity status of U.S. Steel Holdings, but she did not recall a refund request during the call.

Defendant finished its audit in May 2020 and did not include U.S. Steel Holdings in the UBG for the tax years in issue. Plaintiff disagreed with the results of the audit and, on July 27, 2020, plaintiff filed a written request for an informal conference. The informal-conference request stated that plaintiff proposed certain adjustments to its UBG and income. In particular, plaintiff discussed the loss incurred by U.S. Steel Holdings and plaintiff's position that U.S. Steel Holdings

[3] Plaintiff submitted a substantially similar version of the Holdings Memo on June 28, 2019.

should be included in the UBG. Plaintiff asserted that the inclusion of the loss from U.S. Steel Holdings for the audit period led plaintiff to "specifically request[ ] a refund in the amount of $4,525,796, plus any applicable interest."

Plaintiff ultimately withdrew the request for informal conference after the parties reached an agreement with regard to plaintiff's entitlement to a refund. The only disagreement left at the time was, as it is now, when interest began to accrue on the refund amount. Defendant calculated the amount of interest due by using the date of the written request for informal conference—July 27, 2020—as the date for triggering the accrual of interest under MCL 205.30(3). Plaintiff disagreed and asserted that interest should have begun to accrue on October 17, 2018, when it submitted the Holdings Memo.

II. ANALYSIS

Plaintiff moved for summary disposition under MCR 2.116(C)(10). Summary disposition is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Defendant argues that summary disposition should issue in its favor under MCR 2.116(I)(2). Summary disposition may be granted under this subrule when it appears "that the opposing party, rather than the moving party, is entitled to judgment." MCR 2.116(I)(2).

There is no dispute that plaintiff was entitled to a refund of approximately $4,743,285.75. The issue in this case concerns when plaintiff first requested a refund. Under MCL 205.30(1), defendant is required to pay interest to taxpayers who are owed refunds. For a taxpayer to obtain a refund and interest, MCL 205.30(2) directs that a taxpayer who paid a tax that the taxpayer claims is not owed "may petition the department for refund of the amount paid." Interest on refunds "shall be added to the refund commencing 45 days after the claim is filed or 45 days after the date

established by law for the filing of the return, whichever is later." MCL 205.30(3). In summary, to trigger the accrual of interest, a taxpayer must: "(1) pay the disputed tax, (2) make a 'claim' or 'petition' for a refund, and (3) 'file' the claim or petition." *Ford Motor Co v Dep't of Treasury*, 496 Mich 382, 385-386; 852 NW2d 786 (2014).

Plaintiff argues that it filed its claim for refund when it submitted the Holdings Memo to defendant on October 17, 2018. Thus, the Court turns to caselaw interpreting and applying MCL 205.30(3). In *Ford Motor Co*, 496 Mich at 386, the Supreme Court explained that a claim or petition need not take a specific form; however, "it must clearly demand, request, or assert a right to a refund of tax payments made to the Department of Treasury that the taxpayer asserts are not due." For instance, a taxpayer can satisfy the statutory requirement by sending a letter to defendant, so "long as the letter included the information necessary to constitute a definite demand for, request for, or assertion of a right to a refund." *Id*. at 394. The taxpayer need not use any magic words such as "refund" or "claim," as long as the demand is clear. *Id*. at 401 n 8. It is not enough for a taxpayer to imply that the taxpayer may seek a refund; rather, the taxpayer must "*explicitly* demand, request, or assert a right to a refund." *Id*. at 398 (emphasis added). Nor does the triggering of interest accrual occur when the Department of Treasury is merely aware that the taxpayer is entitled to a refund. *Id*. at 398. The taxpayer must make an affirmative request for a refund. *Id*. at 399-400.

The claim or petition must be "filed" with defendant as well. A taxpayer "files" a refund claim when it submits "the claim to [ ] Treasury in a manner sufficient to provide [ ] Treasury with adequate notice of the taxpayer's claim." *Id*. at 386. Once again, while the request need not be made on a specific form, the taxpayer's claim must be made in writing to satisfy MCL 205.30.

Muldavin v Dep't of Treasury, 184 Mich App 222, 226-227; 457 NW2d 50 (1990). See also *Ford Motor Co*, 496 Mich at 392.

In this case, the record shows that the Holdings Memo did not trigger the accrual of interest. The Holdings Memo stated plaintiff's position on whether U.S. Steel Holdings was a "foreign operating entity" under MCL 206.607(3). Then, the email concludes that U.S. Steel Holdings was not a foreign operating entity. While not stated, the implication from this conclusion would be that U.S. Steel Holdings should have been included within plaintiff's UBG. And again, while not stated, the implication from U.S. Steel Holding's inclusion in the UBG would be that plaintiff's tax liability would be lower. And finally, while not stated, the implication from plaintiff's tax liability being lower is that plaintiff overpaid its tax liability. These implications, taken together, would entitle plaintiff to a refund.

But here the implications were left unsaid. However logical the conclusion might have been that plaintiff was likely to ask for a refund, "the statutory language nevertheless requires more of a taxpayer: the taxpayer must make a claim or petition for a refund . . . [and must] explicitly demand, request, or assert a right to a refund." *Ford Motor Co*, 496 Mich at 398. The Holdings Memo lacks any clear expression that plaintiff believed it was entitled to a refund. While the memo expressed a clear difference of opinion as to the treatment of U.S. Steel Holdings, plaintiff never made any type of demand for a refund, what the refund would be, or why plaintiff believed it was entitled to the refund.

Defendant takes the position—and has calculated interest accordingly—that the first time plaintiff made a clear, express claim for refund was in the request for informal conference in July 2020. The Court agrees with defendant. On the record produced by the parties, the informal-

conference request was the first time plaintiff stated, in writing, that it overpaid its tax liability for the period in issue. The informal-conference letter was also the first time that plaintiff stated that the inclusion of U.S. Steel Holdings in the UBG meant that plaintiff was entitled to a refund of tax previously paid. The informal-conference request contained an express demand for a refund. Plaintiff's express demand in the informal-conference request stands in stark contrast to the more tentative language in the Holdings Memo.

Lastly, the Court rejects plaintiff's alternative position, which is that an October 2018 telephone call between Lorenz and Van Buskirk was sufficient to demand a refund and satisfy MCL 205.30. MCL 205.30 requires that a claim for refund be in writing; an oral communication is not sufficient. See *Ford Motor Co*, 496 Mich at 392; *Muldavin*, 184 Mich App at 226-227.

III. CONCLUSION

For the reasons stated in this Opinion and Order, IT IS ORDERED that plaintiff's motion for summary disposition is DENIED.

IT IS FURTHER ORDERED that summary disposition is GRANTED to defendant as the nonmoving party under MCR 2.116(I)(2).

This is a final order that resolves the last pending claim and closes the case.

March 30, 2022

Hon. Brock A. Swartzle
Judge, Court of Claims