

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>BANK OF AMERICA</b>	:	DETERMINATION
	:	DTA NO. 822551
for Revision of a Determination or for Refund of	:	
Mortgage Recording Tax under Article 11 of the Tax	:	
Law with Reference to an Instrument Recorded	:	
on July 7, 2006.	:	

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Petitioner, Bank of America, filed a petition for revision of a determination or for refund of mortgage recording tax under Article 11 of the Tax Law with reference to an instrument recorded on July 7, 2006.

On April 21, 2009 and May 8, 2009, respectively, petitioner, appearing by Gail Y. Papa, officer, and the Division of Taxation, by Daniel Smirlock, Esq. (Marc A. Strange, Esq., of counsel), waived a hearing and agreed to submit this matter for a determination based on documents and briefs submitted by August 21, 2009, which date began the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Timothy Alston, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether petitioner's claim for refund of mortgage recording tax paid was filed beyond the relevant period of limitations and therefore properly denied.

***FINDINGS OF FACT***

1. A mortgage was recorded in the Nassau County (New York) Clerk's Office on July 28, 2005 that secured the purchase of property located on Lakeshore Boulevard, Massapequa, New York, by James and Deborah Imbriani.

2. A mortgage recording tax payment relative to the mortgage described in Finding of Fact 1 was received by the recording officer of the Nassau County Clerk's office on July 28, 2005 in the amount of \$4,600.50.

3. A mortgage was recorded in the Nassau County Clerk's Office on July 7, 2006 that secured the purchase of property located on Lakeshore Boulevard, Massapequa, New York, by James and Deborah Imbriani. This was the same property as referenced in Finding of Fact 1.

4. A mortgage recording tax payment relative to the mortgage described in Finding of Fact 3 was received by the recording officer of the Nassau County Clerk's office on July 7, 2006 in the amount of \$4,600.50.

5. On July 11, 2008, petitioner, Bank of America, filed form MT-15.1, Mortgage Recording Tax Claim for Refund, requesting a full refund of the moneys paid to Nassau County on July 7, 2006. The refund claim indicated that the same mortgage was mistakenly recorded a second time and that, consequently, mortgage recording tax was mistakenly paid twice.

6. On August 1, 2008, the Division of Taxation (Division) issued a letter disallowing petitioner's refund claim because the claim was not filed within the applicable statute of limitations.

***CONCLUSIONS OF LAW***

A. Tax Law § 263(1)(a) provides that no refund of mortgage recording tax shall be allowed unless the claim for refund is filed within two years from the time the erroneous payment was received.

B. Here, the erroneous payment of tax was received by the recording officer of the Nassau County Clerk's office on July 7, 2006. Petitioner's refund claim was filed on July 11, 2008, more than two years from the date of payment of the erroneous tax. Petitioner's refund claim was therefore properly denied.

C. The petition of Bank of America is denied and the Division of Taxation's letter denying petitioner's refund claim, dated August 1, 2008, is sustained.

DATED: Troy, New York  
February 18, 2010

/s/ Timothy Alston  
ADMINISTRATIVE LAW JUDGE