

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

YOEL & SARA GOLDENBERG :

ORDER

DTA NO: 850090

for Redetermination of a Deficiency or for Refund of
New York State and New York City Personal Income
Tax under Article 22 of the Tax Law and the
Administrative Code of the City of New York for Tax
Year 2016.

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Petitioners, Yoel and Sara Goldenberg, seek reargument before this Tribunal and
modification of this Tribunal's decision in the ***Matter of Yoel and Sara Goldenberg*** (Tax
Appeals Tribunal, July 10, 2025).

Petitioners, appearing by Hershel Friedman and Associates (Hershel Friedman, CPA),
filed a notice of motion for reargument and a letter brief in support of the motion. The Division
of Taxation (Division), appearing by Amanda Hiller, Esq. (Michele Milavec, Esq., of counsel),
filed a letter brief in opposition. Petitioners filed a reply letter in response to the Division's
letter brief in opposition.

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

ORDER

On July 10, 2025, this Tribunal issued its decision in ***Matter of Yoel & Sara Goldenberg***
(Tax Appeals Tribunal, July 10, 2025) reversing the determination of the Administrative Law
Judge, which granted summary determination in favor of the Division and granting the exception

by petitioners to the extent that the matter was remanded to an Administrative Law Judge for “a hearing on the questions surrounding the different dates indicated for the issuance of an account adjustment notice for the year in issue.”

The matter concerned a personal income tax refund claim related to the application of certain credits against petitioners’ income for the tax year 2016. This Tribunal determined that there was no evidence that the Division had notice of petitioners’ refund claim for the tax year 2016 prior to July 15, 2020, when the tax return for that tax year was filed. That date was beyond the statutory period for granting a refund. Petitioners also raise equitable grounds for the granting of a refund which were considered and rejected by this Tribunal.

The Division offered an affirmation below that included the assertion that an account adjustment notice was issued on February 27, 2019. If true, the issuance of such a notice may indicate that the Division did in fact have notice of a refund claim by petitioners at a date that may not have been beyond the expiration of the statutory period for considering a refund. On exception, the Division asserted that the date was a typographical error, contradicted by documentation and other evidence in the record, and should be ignored. While conceding that they had no evidence to refute the claim that it was an erroneous entry, petitioners contend that the date might refer to documents which may exist.

Petitioners seek a ruling that the Administrative Law Judge misconstrued the remand to be limited to the specific question of the dates indicated for the issuance of an account adjustment notice for the year in issue. Alternatively, petitioners argue that the Tribunal misapplied the law and seeks reargument prior to further proceedings before the Administrative Law Judge.

Following the decision in ***Matter of Marrero*** (Tax Appeals Tribunal, May 21, 2020), this

Tribunal determined that the question of a different date in the affirmation created “a foundational issue that cannot be resolved in the context of a motion to dismiss or for summary determination. Instead, a fact-finding hearing is necessary to *clarify the matter*” (***Matter of Goldenberg***, July 10, 2025, *emphasis added*).

Petitioners here assert that reliance on ***Matter of Marrero*** is misplaced and, instead, ***Matter of New Cingular Wireless PCS, LLC v Tax Appeals Trib of the State of N.Y.*** (153 AD3d 976 [3d Dept 2017]) is controlling. We disagree, as that conclusion is inconsistent with the language of that decision emphasizing that it was premised “upon the particular facts of this case, and in the absence of a viable alternative . . . ” (153 AD3d at 980).

In its previous order remanding this matter, this Tribunal retained jurisdiction premised upon the original timely-filed exception. We further ruled that after a supplemental determination is issued, petitioners would be permitted to add to their existing exception and briefs, provided they did so within a prescribed time frame. Likewise, the Division was afforded the opportunity to respond to any additional material submitted by petitioners and, if they so elect, to file a timely exception to the supplemental determination. Thus, petitioners’ motion simply seeks to change the order of review in a manner inconsistent with the practices of this Tribunal and the very wording of our decision.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the motion for reargument filed by petitioners is denied.

DATED: Albany, New York
January 8, 2026

/s/ **Jonathan S. Kaiman**
Jonathan S. Kaiman
President

/s/ **Cynthia M. Monaco**
Cynthia M. Monaco
Commissioner

/s/ **Kevin A. Cahill**
Kevin A. Cahill
Commissioner