STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **LTB MECHANICAL CORP.** 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 December 1, 2019 through May 31, 2020.	: : : : : :	DETERMINATION DTA NO. 850675

Petitioner, LTB Mechanical Corp., 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 December 1, 2019 through May 31, 2020.

On March 16, 2026, the Division of Taxation, appearing by Amanda Hiller, Esq. (Aliza J. Chase, Esq., of counsel), brought a motion for summary determination in its favor pursuant to Tax Law § 2006 (6) and 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing by Ira S. Viener Inc. (Ira S. Vierner, CPA,) did not file a response by April 15, 2026, which date began the 90-day period for the issuance of this determination.

Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Alexander Chu-Fong, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation has established that no material and triable issues of fact exists such that summary determination may be granted in its favor.

FINDINGS OF FACT

1. On March 20, 2020, and June 19, 2020, petitioner, LTB Mechanical Corp., filed with the Division of Taxation (Division) New York State and local sales and use tax web filed returns for the periods December 1, 2019 through February 29, 2020 and March 1, 2020 through May 31, 2020 (returns), respectively.

2. On July 10, 2023, petitioner filed with the Division two forms AU-11, New York State and local sales and use tax credit or refund details (refund claims). Petitioner's refund claims sought refunds of $17,898.25 for the period December 1, 2019 through February 28, 2020 and $9,643.64 for the period March 1, 2020 through May 31, 2020. The refund claims list several attachments, including receipts and refund analyses for the relevant periods, which were not submitted into the record.

3. On September 13, 2023, the Division issued a refund claim determination notice (audit case ID X-191370508) (notice), which denied petitioner's refund claims. The notice stated as follows:

> "Your claim for a credit or refund of sales or use tax is being denied in full.
>
> The Sales and Use Tax Law requires that a refund application be filed within three years from the date the taxes are payable to the Tax Department. Sales Tax is deemed to be payable on the 20th day of the month following the quarter in which the sale/purchase was made.
>
> Your claim was filed on 07/10/23. Based on the three year statute of limitations, your claim can only include periods beginning on 06/01/20. All taxes paid on sales/purchases made before that date cannot be recommended for approval."

4. On October 3, 2023, petitioner protested the notice by filing a timely petition with the Division of Tax Appeals. In the petition, petitioner conceded that the refund claims were filed after the expiration of the three-year period, stating that the delay was based on complications due to the COVID-19 pandemic.

5. On March 16, 2026, the Division moved for summary determination in its favor on the basis that the refund claims were filed beyond the statutory three-year period for such claims and, thus, untimely filed.

CONCLUSIONS OF LAW

A. The Division brings a motion for summary determination under section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules). 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" (20 NYCRR 3000.9 [b] [1]).

B. Section 3000.9 (c) of the Rules provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to Civil Practice Law and Rules 3212. "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 issues 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, 562 [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]). "If material facts are in dispute or if different inferences may reasonably be drawn from facts themselves undisputed, a motion for summary judgment must be denied" (***Supan v Michelfeld***, 97 AD2d 755, 756 [2d Dept 1983], citing ***Moskowitz v Garlock***, 23 AD2d 943, 943-944 [3d Dept 1965]; ***Gerard v Inglese***, 11 AD2d 381, 382 [2d Dept 1960]).

C. Tax Law § 1139 (a) provides, in relevant part:

> "In the manner provided in this section the tax commission shall refund or credit any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application therefor shall be filed with the tax commission (i) in the case of tax paid by the applicant to a person required to collect tax, within three years after the date when the tax was payable by such person to the tax commission . . . or (ii) in the case of a tax, penalty or interest paid by the applicant to the tax commission, within three years after the date when such amount was payable under this article . . . " (***see also*** 20 NYCRR 534.2 [b] [1]).

Tax Law § 1139 (c) provides, in pertinent part, as follows:

> "Claim for credit or refund of an overpayment of sales tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid."

As the Tax Appeals Tribunal has opined:

> "The statute of limitations [under Tax Law § 1139 (a)] is three years. Its purpose is to allow a reasonable time for taxpayers who have erroneously filed or paid taxes to realize their error and make [an] application for refund. The State is thus put on notice that there is this three year period during which it may be liable for such claims. At the end of the period, the matter is settled. Anything less than this degree of certainty would make the financial operation of government difficult, if not impossible. In short, the statute of limitations at issue here is a balance between the needs of the State with regard to the protection of its financial resources and the rights of taxpayers to correct their errors" (***Matter of Nierenstein***, Tax Appeals Tribunal, April 21, 1988).

D. Herein, as the party raising the issue of the statute of limitations, the Division must show the date in which the statutory period expires and the receipt of the document in question is after that date (***see Matter of Jencon, Inc.***, Tax Appeals Tribunal, December 20, 1990). The Division has established that under Tax Law § 1139 (a), for the periods December 1, 2019 through February 29, 2020, and March 1, 2020 through May 31, 2020, the sales tax was deemed payable on the 20th day of the month following the end of the quarter (***see*** Tax Law § 1136 [b]), and payment must be made when the return is filed (***see*** Tax Law § 1137 [b]). In this case, the returns were due on March 20, 2020, and June 22, 2020, respectively. Applying Tax Law § 1139 (c), the latest dates to file a timely refund claim for these periods were three years from the date the returns were filed, i.e., March 20, 2023, and June 19 2023, respectively. The Division established that it received the refund claims on July 10, 2023, a date which is after the expiration of the respective statutory periods for filing the refund claims. Accordingly, the Division has established prima facie entitlement to judgment as a matter of law.

E. To defeat the motion, the burden shifts to the non-moving party to produce evidentiary proof in admissible form to establish the existence of material issues of fact that require a trial (***see Whelan v GTE Sylvania***, 182 AD2d 446, 449 [1st Dept 1992], citing ***Zuckerman v City of New York***, 49 NY2d at 562). Petitioner did not respond to the Division's motion. As it did not respond, it is deemed to have admitted that no question of fact requiring a hearing exists (s***ee Kuehne & Nagel v Baiden***, 36 NY2d 539 [1975]; ***John William Costello Assoc. v Standard Metals Corp.***, 99 AD2d 227 [1st Dept 1984], ***appeal dismissed*** 62 NY2d 942 [1984]). Moreover, in the petition, it conceded that the refund claims were untimely, stating that the COVID-19 pandemic hindered its ability to file the refund claims. There are no material facts in dispute. Regarding petitioner's rationale for late filing, as a forum of limited jurisdiction, the Division of Tax Appeals has no flexibility with regard to the Tax Law's statutory limitations period for filing refund requests (***see*** Tax Law § 2008 [1]; ***Matter of Kroll Bond Rating Agency, Inc.***, Tax Appeals Tribunal, October 1, 2018).

F. The Division of Taxation's motion for summary determination is granted, the petition of LTB Mechanical Corp. is denied and the refund claim determination notice, dated September 13, 2023, is sustained.

DATED: Albany, New York
July 9, 2026

/s/ Alexander Chu-Fong
ADMINISTRATIVE LAW JUDGE