

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**YECHZKEL LEIDER** : DETERMINATION  
for Revision of a Determination or for Refund of : DTA NO. 851001  
Mortgage Recording Tax under Article 11 of the Tax :  
Law with Reference to an Instrument Recorded on :  
February 28, 2022. :  
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Petitioner, Yechezkel Leider, 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 February 28, 2022.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Kaitlyn Smith, Esq., of counsel), brought a motion, dated March 3, 2026, seeking an order dismissing the petition or, in the alternative, summary determination in its favor in the above-referenced matter pursuant to sections 3000.5 and 3000.9 (a) and (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, did not respond to the Division of Taxation's motion by April 2, 2026, which date commenced the 90-day period for the issuance of this determination.

Based upon the motion papers, affirmation, affidavit and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Nicholas A. Behuniak, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether petitioner established that the Division of Taxation improperly denied his claim

for refund of mortgage recording tax as untimely filed.

***FINDINGS OF FACT***

1. On February 28, 2022, petitioner, Yechezkel Leider, claimed he paid \$20,155.80 in mortgage recording tax for a property located in Rockland County, New York.

2. On March 29, 2024, petitioner filed form TP-592.2, real estate transfer tax claim for refund, requesting a refund of \$16,632.00 of “mortgage tax” paid on the Rockland County property. Petitioner’s form TP-592.2 indicated that he secured a \$1,919,600.00 mortgage for his Rockland County property and paid \$20,155.80 of mortgage recording tax on such. Petitioner indicated that he “only took out [\$]335,600 [sic] and [he] terminated the rest of the loan.” Petitioner requested a refund of the mortgage recording tax relating to the portion of the loan not taken.

3. The Division of Taxation (Division) reviewed petitioner’s real estate transfer tax refund claim. The Division determined that the requested refund of \$16,632.00 pertained to mortgage recording tax paid and not the real estate transfer tax. Because the claim requested a refund of mortgage recording tax paid, the Division determined that form TP-592.2 was not the appropriate form for a refund request and that petitioner should request the refund on form MT-15.1, mortgage recording tax claim for refund.

4. On May 22, 2024, the Division issued a refund claim determination notice to petitioner denying the requested refund because the form TP-592.2 filed by petitioner was for a refund of real estate transfer tax paid and petitioner had indicated that he sought the refund of mortgage recording tax paid. The refund claim determination notice instructed petitioner to file form MT-15.1 to request a refund of mortgage recording tax.

5. On May 28, 2024, petitioner filed form MT-15.1, requesting a refund of \$16,632.00

of mortgage recording tax paid. On the form MT-15.1, petitioner indicated the mortgage recording tax at issue was paid on February 28, 2022.

6. The Division reviewed the form MT-15.1 filed by petitioner and concluded that the length of time between when petitioner paid the mortgage recording tax and when he filed form MT-15.1 requesting the refund was beyond the two-year statute of limitations for claiming a refund and his refund claim was, therefore, late filed.

7. On June 7, 2024, the Division issued a refund claim determination notice to petitioner denying his claim for a refund in full on the basis that the request was not timely filed within the requisite period of limitations.

8. On June 26, 2024, petitioner timely filed a petition challenging the refund claim determination notice.

9. The Division, in turn, filed the subject motion seeking dismissal of the petition or, in the alternative, summary determination in its favor on the premise that, regardless of the substantive basis upon which petitioner claims a refund, the claim itself was not filed within two years from the date of payment of the tax. Therefore, the Division argues that the relief sought by petitioner is barred by operation of law.

### ***CONCLUSIONS OF LAW***

A. As noted, the Division brings a motion to dismiss the petition under section 3000.9 (a) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules) or, in the alternative, a motion for summary determination under section 3000.9 (b). As the petition in this matter was timely filed, the Division of Tax Appeals has jurisdiction over the petition and, accordingly, a motion for summary determination under section 3000.9 (b) of the Rules is the proper vehicle to consider the timeliness of petitioner's refund request. This determination shall

address the instant motion as such.

B. 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]).

C. 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 contrary inferences may be drawn reasonably from undisputed facts,” then a full trial is warranted and the case should not be decided on a motion (*Gerard v Inglese*, 11 AD2d 381, 382 [2d Dept 1960]). “To defeat a motion for summary judgment, the opponent must . . . produce ‘evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim’” (*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. Accordingly, he is deemed to have conceded that no question of fact requiring a hearing exists (*see Kuehne & Nagel v Baiden*, 36 NY2d 539, 544 [1975]; *John William Costello Assoc. v Standard Metals Corp.*, 99 AD2d 227,

229 [1st Dept 1984], *appeal dismissed* 62 NY2d 942 [1984]).

D. Tax Law § 263 (1) (a) provides that no refund of tax paid under Tax Law article 11 (tax on mortgages) shall be allowed unless an application for refund is made within two years from the time the erroneous payment of tax was received. Here, petitioner represents that the tax was paid on February 28, 2022. Petitioner's claim for a refund of mortgage recording tax was not filed until May 28, 2024. Since petitioner's claim was filed more than two years after the tax was paid, such claim must be denied as untimely as a matter of law.<sup>1</sup> Accordingly, with no dispute as to the facts and no basis in law upon which to grant petitioner's claim, summary determination is granted in the Division's favor.

E. The Division of Taxation's motion for summary determination is hereby granted, the petition of Yechezkel Leider is denied and the refund claim determination notice, dated June 7, 2024, is sustained.

DATED: Albany, New York  
June 18, 2026

/s/ Nicholas A. Behuniak  
ADMINISTRATIVE LAW JUDGE

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<sup>1</sup> It is noted that even if petitioner's earlier filing of form TP-592.2 on March 29, 2024, was deemed an informal refund claim (*see Matter of Tsoumas*, Tax Appeals Tribunal, June 15, 2017) for the mortgage recording tax at issue, such a claim was filed more than two years after the tax was paid and would be untimely. Therefore, the outcome of this determination would remain the same.