

NEW YORK CITY TAX APPEALS TRIBUNAL  
ADMINISTRATIVE LAW JUDGE DIVISION

In the Matter of the Petition : DETERMINATION  
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 of : TAT (H) 14-8 (RP)  
 :  
 JAMESTOWN, L.P., as successor to :  
 JAMESTOWN CHELSEA MARKET, L.P. :  
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Rodriguez-Diaz, A.L.J.:

Petitioner, Jamestown, L.P. as successor to Jamestown Chelsea Market, L.P., timely filed a Petition with the New York City (City) Tax Appeals Tribunal (Tribunal) for the allowance of a refund of City Real Property Transfer Tax (RPTT) under Chapter 21 of Title 11 of the Administrative Code of the City (Code) that was paid with respect to the August 1, 2011 transfer (2011 Transfer) of real property located at 75 Ninth Avenue, New York, New York (Borough of Manhattan, Block number 713, Lot number 1) (Property).

On March 20, 2015, the parties submitted a Stipulation of Facts (Stipulation) and accompanying exhibits. Also, on March 20, 2015, the City Commissioner of Finance (Commissioner or Respondent) filed a Notice of Motion for Summary Determination, an Affirmation in Support of Motion for Summary Determination and accompanying exhibits, and a Memorandum in Support of Respondent's Motion for Summary Determination (March 20, 2015 Memorandum). On May 6, 2015, the Petitioner filed a Notice of Cross-Motion for Summary Determination, an Affirmation in Support of Cross-Motion for Summary Determination, and a Memorandum (i) in Opposition of Respondent's Motion for Summary Determination

and (ii) in Support of Petitioner's Cross-Motion for Summary Determination (May 6, 2015 Memorandum). On July 22, 2015, the Respondent submitted a Reply Memorandum in Further Support of Respondent's Motion for Summary Determination and in Opposition to Petitioner's Cross Motion (July 22, 2015 Memorandum), and an Affirmation in Further Support of Respondent's Motion for Summary Determination and in Opposition to Petitioner's Cross Motion and accompanying exhibits. On September 11, 2015, the Petitioner filed a Reply Memorandum in Support of Petitioner's Cross-Motion for Summary Determination (September 11, 2015 Reply Memorandum), and an Affirmation in Support of Petitioner's Cross-Motion for Summary Determination and accompanying exhibits.

On September 17, 2015, Respondent filed a "Corrected" Reply Memorandum in Further Support of Respondent's Motion for Summary Determination and in Opposition to Petitioner's Cross Motion (September 17, 2015 Memorandum). On October 30, 2015, the Petitioner filed a Sur-Reply Memorandum (i) in Opposition of Respondent's "Corrected" Reply Memorandum and (ii) in Further Support of Petitioner's Cross-Motion for Summary Determination (October 30, 2015 Memorandum).

On March 10, 2016, an in-person Conference was held before the undersigned. At the Conference the parties consented to the filing, on or before April 21, 2016, of Respondent's Sur-Reply Brief and Affirmation providing additional information requested by the undersigned, and to the filing, on or before May 26, 2016, of Petitioner's Sur-Reply Brief and Affirmation providing additional information requested by the undersigned. On April 21, 2016, Respondent submitted a letter stating that it had decided not to file the Sur-Reply Brief and that it would rest on

the submitted briefs, and submitted a Supplemental Affidavit in Further Support of Respondent's Motion for Summary Judgment and in Opposition to Petitioner's Cross Motion for Summary Determination providing information requested by the undersigned during the Conference. On April 28, 2016, the Tribunal issued a Notice confirming the May 26, 2016 due date for Petitioner's Affirmation providing additional information. On May 4, 2016, Petitioner submitted the Affidavit of Thomas A. Glatthaar in Support of Petitioner's Cross-Motion for Summary Determination providing additional information requested by the undersigned during the Conference. Petitioner was represented by Dennis Rimkunas, Esq. of Jones Day. The Commissioner was represented by Frances J. Henn, Esq., Assistant Corporate Counsel,<sup>1</sup> and Amy Bassett, Esq., Senior Counsel.

#### ISSUES

1. Whether summary determination should be granted in favor of the Respondent because there are no disputed facts and, as a matter of law, the facts mandate a determination in its favor that Petitioner made an untimely application to the Respondent for an RPTT refund.

2. Whether summary determination should be granted in favor of the Petitioner because there are no disputed facts, and as matter of law, the facts mandate a determination in its favor that Petitioner made a timely application to the Respondent for an RPTT refund.

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<sup>1</sup>Ms. Henn represented Respondent until April 11, 2016, on which date she advised the undersigned that she was no longer assigned to the case.

FINDINGS OF FACT

1. Petitioner, a Partnership, owned the entire Property.
2. On August 1, 2011, Petitioner conveyed its entire interest in the Property pursuant to an arm's length sale (2011 Transfer).
3. The Property is an office building. The purchaser of the property is also a partnership, Jamestown Premier Chelsea Market, L.P. (Premier). The total consideration for the 2011 Transfer was \$795,000,000, and the percentage change in beneficial ownership was 100%.
4. An RPTT Return with respect to the 2011 Transfer was executed, on July 27, 2011, by a representative of Petitioner as grantor and, on July 28, 2011, by a representative of Premier as grantee. The RPTT due was \$20,868,750, computed at the 2.625% tax rate for commercial properties.
5. Before the 2011 Transfer, Christoph and Ute Kahl, as husband and wife, had a beneficial ownership interest in the Property aggregating approximately 9.67%. After the 2011 Transfer, their beneficial ownership interest in the Property aggregated approximately 22.3%.<sup>2</sup>
6. The parties stipulated that the Petitioner paid the RPTT due by submitting to Respondent a check (Check) payable to "NYC Dept of Finance" (Department), and that the back of the

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<sup>2</sup>It is unclear what relationship existed between Christoph and Ute Kahl and Petitioner before the 2011 Transfer, and between Christoph and Ute Kahl and Premier after the 2011 Transfer.

Check states that it was processed by Bank of America on Friday, August 11, 2011.<sup>3</sup> However, August 11, 2011 was a Thursday.

7. The year 2012 was a leap year.

8. Petitioner states in its September 11 Reply Memorandum that, "[t]he tax in this matter was paid with an uncertified Check," that, "[i]t is not disputed that Respondent received the Check at issue prior to August 11, 2011," and that, "[t]he back of the Check tells the whole story . . . [that] [o]n or before August 10, 2011, Respondent received the Check, as suggested by Respondent's testimony regarding processing/'franking' [sic] of checks."

9. The Check is attached as an exhibit to the Stipulation. Its front shows Fidelity National Title Insurance Company (Fidelity),<sup>4</sup> Escrow Trust-New York Branch as the Payor, a Check number, the payment amount of \$30,309,347.21,<sup>5</sup> the Department as the payee, the number 2011000400[#]44 immediately below the words NYC Dept. of Finance, a serial number MP070015842, and JP Morgan Chase Bank as the name of the bank holding the payor's checking account. The date of the Check is not entirely legible and states what appears to be "August [one digit #], 201[one digit #]."

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<sup>3</sup>See paragraph 28 below which provides that the Department had an account with Bank of America in August 2011.

<sup>4</sup>Petitioner does not state in any of its submissions the nature of its relationship with Fidelity.

<sup>5</sup>See paragraph 27 below which provides a detailed description of the fees and taxes that resulted in the \$30,309,347.21 balance due.

10. The back of the Check shows in the payee's endorsement section the words "FOR DEPOSIT ONLY," and immediately below these words there is certain information that is not legible. The back of the Check also shows in the area below the payee's endorsement section in a vertical direction a serial number, the date "August 11" followed by illegible text. Horizontally it shows the words Bank of America followed by illegible text, a date not entirely legible, which states "0[#]/11/11," and a serial number.

11. The Department's Recording and Endorsement Cover Page (Recording Cover Page) to the August 1, 2011 deed is attached as an exhibit to the Stipulation. It shows a preparation date of August 5, 2011, a recorded/filed date of August 15, 2011, a stamp affixed right next to the recorded/filed date, a Document ID number 2011080400544005, and a City Register File No. (CRFN) 2011000287491. The Recording Cover Page also shows that the Presenter was Fidelity, that the Return recipient was King & Spalding LLP,<sup>6</sup> and that the fees and taxes due included \$87 recording fee, \$250 filing fee, \$20,868,750 RPTT, and \$3,180,000 New York State Real Estate Transfer Tax, for a total \$24,049,087.

12. The RPTT Return filed by the Petitioner is attached as an exhibit to the Stipulation and it shows that the Office of the City Register (City Register) stamped the date of August 9, 2011 on it.

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<sup>6</sup>Petitioner has not explained its relationship with King & Spalding LLP (Firm). It is assumed for purposes of this Determination that Firm represented a party to the transaction.

13. On August 17, 2011 the City Register, Ms. Annette Hill, wrote a letter confirming the successful recording of Petitioner's documents. (August 17, 2011 Letter). A copy of the August 17, 2011 Letter is attached as an exhibit to the Stipulation. This Letter shows that the Letter is addressed to King & Spalding LLP and provides the following:

"Document Identification Number 2011080400544005 which was submitted for Recording on 8/12/2011, was successfully recorded on 8/15/2011 at 4:50 PM. Below summarizes the status of these documents. Documents and Recording & Endorsement Cover Pages Enclosed Herewith 2011080400544005."

14. On August 3, 2012, Petitioner's Representative requested certified copies of documents located under document ID 2011080400544005. The record includes a City Register's Customer Document Print Summary (Document Print Summary), prepared on 8/3/2012 at 5:55:13 PM, which shows that for Document ID 2011080400544005 and CRFN 2011000287491 the recorded/filed date and time of a deed dated 8/1/2011, which involved the amount of \$795,000,000.00, was 8/15/2011 at 4:50:50 PM.

15. On Monday, August 13, 2012, Petitioner requested a refund of RPTT in the amount of \$2,018,008.12, by letter to the Department, Business/Excise Tax Refund Unit, dated August 13, 2012, a copy of which is attached to the Petition. (August 13, 2012 Letter). In the August 13, 2012 Letter, Petitioner's Representative stated that an error existed in the computation of the RPTT due reported in the RPTT return, which did not consider the RPTT exemption (Exemption) provided in the Administrative

Code and City RPTT Rules for conveyances of real property interests that effect a mere change of identity or form of ownership to the extent the beneficial ownership of such real property or economic interest remains the same. Petitioner's Representative also requested in the Letter a refund of \$2,018,008.12 of the paid City RPTT, stating that the retention by Christoph and Ute Kahl of their approximate aggregate 9.67% beneficial ownership interest after the 2011 Transfer qualified the 2011 Transfer for the Exemption to the extent of 9.67% of the consideration, with the result that RPPT due was \$18,850,741.88.

16. On October 5, 2012, City Tax Auditor, Dalton Lowe, wrote Petitioner's Representative acknowledging receipt of Petitioner's request for RPTT refund and requesting additional information needed, including a copy of the front and back of the cancelled Check, submitted in payment of the filing fee. (October 5, 2012 Letter). The October 5, 2012 Letter referenced the following: "Case ID: 201200383; Tax Type: Real Property Transfer Tax, Unit: RPTT, Transfer Date: 08/01/2011, and Filing Date: 08/09/2011."

17. On September 23, 2013, Respondent denied Petitioner's claim for refund on the basis that the claim was not filed within one year of the payment of the tax, and issued a Notice of Disallowance denying Petitioner's \$2,018,008.12 refund request on the grounds that the refund claim was not timely filed pursuant to the Code and RPTT Rules.



18. The City Register maintains an Automated City Register Information System (ACRIS) payment report (ACRIS Report), which reflects the date a payment of RPTT is processed by the Department of Finance Business Center.

19. In a facsimile, dated September 26, 2013, Mr. Dalton Lowe, City Tax Auditor, provided Petitioner's representative a copy of an ACRIS Report dated September 26, 2013. The September 26, 2013 ACRIS Report, attached to the Stipulation as an exhibit, shows the heading "ACRIS Payment Report, Payments for Recorded Documents," a recorded document status for Document ID 2011080400544005, a recorded date and time of 8/15/2011 at 4:60:50 PM, a payment date and time of 8/10/2011 at 10:18:16 AM, and an amount of \$24,049,087.00.

20. Attached to the Stipulation is a copy of an ACRIS Report, dated October 22, 2014, of an RPTT payment, which shows the heading "ACRIS Payment Report, Payments Received and Recorded-Payment Detail," and which recites a transaction number 2011080400544000, a payment date and time of August 10, 2011 at 10:18:16, an amount of \$30,309,347.21, a BC tender type, a receipt number MP070015842, and a receipt date of 2011-08-10.

21. On December 5, 201[3],<sup>7</sup> Petitioner timely filed a Request for a Conciliation Conference.

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<sup>7</sup>The Parties stated in the Stipulation of Facts that, "[o]n December 5, 2014, Petitioner timely filed a Request for Conciliation Conference." However, since they also stipulated that, "[o]n April 22, 2014, the Conciliation Conference proceeding was discontinued," it is assumed for purposes of this Determination that the Request for Conciliation Conference was filed in 2013.

22. On February 20, 2014, the Department issued a Proposed Resolution, which the Petitioner signed in disagreement on March 18, 2014.

23. On April 22, 2014 the Department issued a Conciliation Determination discontinuing the conciliation proceeding.

24. On May 23, 2014, Petitioner filed a Petition with the Tribunal requesting an allowance of the claim for refund of RPTT paid of \$2,018,008.12. Several documents were attached to the Petition, including a Rider to Petition, copy of the Check, Notice of Disallowance, and the Conciliation Determination.

25. Attached to Respondent's Affirmation in Support filed on March 20, 2015 is an Affidavit of Annette Hill, dated March 17, 2015. (Hill March 17, 2015 Affidavit). Ms. Hill stated that she "was the City Register at the time the deed in question was recorded and when the related [RPTT] return was filed and the RPTT was paid." In her Affidavit, Ms. Hill stated: "[a]s noted by the date stamp on the front of the RPTT return . . . the RPTT return was filed with the City Register on August 9, 2011[,] [and] the RPTT return reported tax due of \$20,868,750." She also affirmed that the ACRIS Reports, dated September 26, 2013 and October 22, 2014, show "that the payment in question was processed at 10:18 AM on August 10, 2011," and that,

"[t]he total payment noted on the ACRIS payment report is in the amount of \$30,309,347.21, which included the RPTT [due], as well as the New York State Real Estate Transfer Tax, Transfer Tax filing fee, Mortgage Recording Tax and Filing and Recording fees for all

documents included under [the] transaction number 2011080400544."

Annette Hill further provided:

"The ACRIS payment report is maintained by the ACRIS system. Entries are made at the time the RPTT payment is processed by the Department of Finance's Business Center (hereinafter "Business Center"). Payments can be made at the City Register's Office or at the Business Center. If an RPTT tax payment is delivered to the City Register's office along with the RPTT return, the payment would be taken by a City Register employee to the Business Center for processing. On occasion, depending on how late in the day the payment is delivered to the City Register's office, the payment might not be taken to the Business Center for processing until the next day . . . . [A]s the ACRIS Payment Report indicates that the payment was processed on August 10, 2011, the payment in question could have been made with the filing of the return on August 9, 2011 and taken by an employee of the City Register to the Business Center the morning of August 10, 2011 or it could have possibly been made directly to the Payment Business Center the morning of August 10, 2011."

She continued:

"For a document to be recorded it must be accompanied by a 'Recording and Endorsement Cover Page'. While the 'Recording and Endorsement Cover Page' in this case . . . . notes in the lower right hand corner that the deed was 'recorded/filed' on 08/15/2011, that date does not represent the date that the deed was presented to the City Register for recordation but rather is the date the deed is deemed accepted for recording after review by the examiner in the Register's office . . . ."

And she further stated:

"When it was noted in a letter to King and Spalding dated August 17, 2011 . . . that document number 2011080400544005 was 'submitted for recording on August 12, 2011', the August 12<sup>th</sup> date represents the date

that the document went into 'workflow', after scanning, for the examiner to review . . . [T]he statement in the August 17<sup>th</sup> letter that document number 2011080400544005 'was successfully recorded on 8/15/2011' relates to the date the document was deemed accepted for recording after review by the examiner in the Register's office."

26. Petitioner's Affirmation in Support filed on May 6, 2015 provided that, "[n]o receipt [for the RPTT payment] was provided to [the Petitioner]," and that no "procedure exist[s] for the Register's Office to provide a receipt to [the Petitioner]" for such payment. Petitioner's Representative further affirmed that a search in ACRIS based on the Document Identification Number or CRFN assigned to the 2011 Transfer shows only the dates of August 1, 2011 for the Document Date and August 15, 2011 for the Recorded/Filed date. Attached as Exhibit A to this Affirmation are copies of the Recording Cover Page, Document Print Summary, and ACRIS Search Results by Transaction Number and Document Identification Number.

27. Attached to Respondent's Affirmation filed on July 22, 2015 is an Affidavit of Annette Hill, dated July 21, 2015. (Hill July 21, 2015 Affidavit). In her Affidavit, Ms. Hill restated the available procedures for submission of payment of RPTT. She further provided that, "[i]f the customer/presenter gives the check to the City Register, a Register employee will bring the check and the Payment Cover Page [generated by the customer/presenter] to the Manhattan Payment Center," and that if, in the alternative, "the customer/presenter chooses to bring

the Check to the Manhattan Payment Center, the customer/presenter will bring the payment along with the Payment Cover Page to the Manhattan Payment Center." She stated in this Affidavit that, "[she] know[s] that the payment check in question was delivered on or before 8/10/11 because the ACRIS Payment Report reflects that date." In Ms. Hill Affidavit, she explained that, "[t]he information available through the ACRIS Payment Report can be accessed via a terminal by City Register employees and other Department of Finance employees without the necessity of printing the Report." Finally, she emphasized that, "[t]he City Register does not use tax stamps to evidence the payment of tax," that, "[t]here is nothing on the Recording and Endorsement Cover page which is, or is the equivalent of, a 'tax stamp' or otherwise indicates the date the RPTT in question was paid", and concluded that, "[t]he RPTT in question was neither paid nor deemed paid on August 15, 2011," but rather, "the 8/15/2011 date noted on the Recording and Endorsement page is the date the document was deemed accepted for recording after review by the examiner in the Register's office," and "[such] date does not represent or in any way relate to the date the check in payment of the RPTT in question was delivered to the City Register or the Manhattan Payment Center."

Attached as Exhibit 1 to the Hill July 21, 2015 Affidavit is a reprint of the Payment Cover Page for Transaction 2011080400544 showing the fees for related transactions, which represented the total of \$30,309,347.21 stated on the Check:

"Power of Attorney:	Fees:	\$72
Assignment, Mortgage:	Fees:	\$112
Asgn of Asgn of L&R:	Fees:	\$77
Termination of Assign of L&R:	Fees:	\$57
Deed:		
	Fees:	\$337
	Taxes:	\$24,048,750
Assignment, Mortgage:	Fees:	\$100
Sundry Miscellaneous:	Fees:	\$82
Mortgage:		
	Fees:	\$82
	Taxes:	\$6,259,313.21
Agreement:	Fees:	\$230
Assignment of Leases and Rents:	Fees:	\$95
Initial UCC1:	<u>Fees:</u>	<u>\$40</u>
Transaction Total		\$30,309,347.21"

28. Respondent also attached to its Affirmation in Further Support filed on July 22, 2015 the Affidavit of John Conry dated July 21, 2015. (Conry July 21, 2015 Affidavit). He stated in his Affidavit that he was Senior Director of the Business Centers Citywide, that he was in that same position in August 2011, and that his "responsibilities include[d] oversight of the five Business Centers Citywide, which include[d] all administrative functions covering Customer Service and Cashiering." He affirmed that, "[t]he ACRIS payment report is part of the ACRIS system which . . . interfaces with the Manhattan Payment Center's NYCServ system," and "[t]he information available through the NYCServ Payment Research Transaction Details Screen Report . . . can be accessed via a terminal without the necessity of

printing." Attached as Exhibit 1 to this Affidavit is a copy of a NYCServ Payment Research Transaction Details Screen Report, which shows among, other things, a Receipt Number: MP070015842, Transaction Date/Time: 08/10/11 10:18 AM, Transaction Amount \$30,309,347.21, Description: Recording Fees and Taxes, and Item Identifier: 2011080400544000011P21CE. He stated further that the NYCServ Payment Research Transaction Details Screen Report shows "the same transaction date and time 8/10/11 10:18 AM," amount of payment, and receipt number as the ACRIS Report dated September 26, 2013 and the ACRIS Report dated October 22, 2014. He explained in this Affidavit that, "[t]he information on the NYCServ Payment Research Transaction Details Screen Report is automatically generated and the information set forth on that screen or report, including but not limited to the payment date, was not manually inputted or capable of being manually altered."

Mr. Conry explained in this Affidavit that:

"When a presenter or a City Register employee brings a check to the Manhattan Payment Center, the check must be presented with a Payment Cover Page . . . . The barcode on the Payment Cover Page . . . is scanned and a popup appears on the computer terminal which tells the cashier to feed the check into the franking reader/printer."

He described the process that follows once the cashier feeds the check into the franking reader/printer:

"The franking reader/printer . . . automatically prints the following endorsement on the back of the Check, under the statement 'endorse here': 'FOR DEPOSIT ONLY' followed by four lines of information: (1) The processing date and time; (2) the transaction id

number; (3) amount and (4) receipt number . . . . [The copy of the Check attached as an Exhibit] to the Stipulation of Facts, shows these four lines of information which were printed on the check by the franking reader/printer and confirms that the check was fed into the franking reader/printer . . . . The franking reader/printer also prints the transaction number (2011080400544) and the receipt number (MP070015842), both unique to [Petitioner's] payment, on the front of the check . . . . Both the transaction and receipt numbers conform to those same numbers on the ACRIS and NYCServ reports . . . . The franking printer/reader also generates a receipt which can be provided to the presenter."

Attached as Exhibit 2 to the Conry July 21, 2015 Affidavit is a reprint of a receipt dated 8/10/2011 issued by the Business Center, which shows the title of Manhattan Payment Center, Detailed Receipt, Re-print, and receipt number: MP070015842, for a transaction described as ACRIS Recording Fees and Taxes and Transaction ID 2011080400544000011P21CE, for the amount of \$30,309,347.21. He emphasized in his Affidavit that, "[t]he Department had an account with Bank of America in August 2011," that, "[t]he franking process is embedded in the cashiering process," that, "[t]he only manual part of the process is the scanning of the Payment Cover Page bar code and the feeding of the check into a franking reader/printer," and that, "feeding the payment check into the franking reader/printer is part of the franking process which results in the generation of the 'payment date/time' noted in the ACRIS and NYCServ information systems."

29. Petitioner attached to its Affirmation in Support filed on September 11, 2015 a copy of a JPMorgan Chase bank statement for a Fidelity's commercial checking account with the same



account number as the one stated on the Check and for the period of July 30, 2011 through August 31, 2011, which shows that a check with the same check number as the one stated on the Check and for \$30,309,347.21 was paid on August 11, 2011. Petitioner also attached to this Affirmation a copy of the instructions for the RPTT Return (RPTT Return Instructions), which indicate that, "[t]he tax may be paid by certified check, or an Attorney's Trust Account check, drawn on a U.S. bank, or money order . . . ."

30. In the Annette Hill Supplemental Affidavit of Annette Hill filed by the Respondent on April 21, 2016 (Hill Supplemental Affidavit), Ms. Hill stated:

"2. . . . when the hard copy of the RPTT return is filed with the Register the customer/presenter can either present the check in payment of taxes and fees to the City Register along with the return or bring the check to the Manhattan Payment Center.

3. During the period of time when the payment in question was made, no payment receipts were available at the City Register. There were no signs at the City Register informing taxpayers that they may obtain a receipt if the payment is made at the Business Center. However, if a receipt is requested by a taxpayer while the taxpayer is at the City Register, City Register employees are instructed to inform the taxpayer to take the payment along with the Payment Cover Page to the Business Center and the Business Center would generate a receipt upon presentation of the payment. In Manhattan, the Business Center is on a different floor but in the same building as the City Register . . . .

4. If the RPTT is paid by check, the check will have a date printed on the back by the franking reader/printer as part of the City's endorsement. This date typically reflects the date the check was delivered.

5. Penalties and interest for late payment are automatically assessed by the Department of Finance, not the City Register, based upon the date of delivery. However, if a taxpayer disputes the assessment of late payment penalties and interest, those disputes would be referred to the City Register who will then consider facts presented by the taxpayer to establish timeliness including, but not limited to, proof of mailing or sworn statements by the individual who presented the Check. The City Register would not take into consideration the date the check was cleared by the taxpayer's bank."

31. Thomas A. Glatthaar, Senior Vice President and Senior Underwriting Counsel for Fidelity at the time of his Affidavit, filed an Affidavit on May 4, 2016, and stated:

"3. The check for the payment of the RPTT and other taxes and fees, as well as the documents necessary for the recording of the deed with respect to the Transfer were hand delivered to the Office of the City Register.

4. At the time of the Transfer, Fidelity's procedures mandated that the checks and relevant documents be hand delivered to the Office of the City Register in all cases. Because the Office of the City Register receives hundreds, if not thousands, of documents every day, Fidelity, at the time, required hand delivery to ensure that the checks and relevant documents would not be lost during mailing.

6. . . . Fidelity sent the check and the relevant documents to a third party contractor, SL Title Services, via Federal Express. An employee of SL Title Services then physically brought the check and the documents to the Office of the City Register to commence the recording process. To my knowledge, SL Title Services is no longer in business."

## STATEMENT OF POSITIONS

Petitioner claims that the RPTT refund request was timely because it occurred within one year from the date of RPTT payment to the Respondent, which was either on August 11, 2011, when the Petitioner's bank transferred the money to the Respondent as evidenced by the date of cancellation of the check, or on August 15, 2011, when the Register's Office affixed its stamp symbolized by the words "Recorded/Filed" to the Recording Cover Page. Petitioner supports its argument that the RPTT payment occurred on August 11, 2011 by, among other things, stating that the requirement in RPTT Rules § 23-14 [b] for an RPTT refund application to be accompanied by either "the cancelled check" or "a photocopy of it," and the October 5, 2012 request by City Tax Auditor, Dalton Lowe, of a copy of the cancelled Check, show that a copy of the Check is the evidence establishing the date of RPTT Payment. Petitioner also argues that the RPTT payment occurred on August 15, 2011 because the Recording Cover Page stamped by the City Register provided to the taxpayer is the only date published on ACRIS for the 2011 Transfer, and because the RPTT rules are based on Federal documentary stamp tax, under which the physical act of affixing a stamp such as the "Recorded/Filed" date on the Recording Cover Page would constitute payment. Petitioner further contends that a statute of limitations should not be applied by a court to cases that are not clearly within its provisions, and that all taxing statutes of doubtful meaning are to be construed in favor of the taxpayer and against the taxing authority. Petitioner argues that it is unfair that no date of RPTT payment is shown on any publicly available document

since the date of RPTT payment should be a date certain to give to taxpayers the ability to calculate the deadline for filing an RPTT refund claim without ambiguity or confusion. Finally, Petitioner asserts that ACRIS Reports, which are not generally available to the public online through the ACRIS system, are internal documents that lack credibility since the Respondent can manipulate their content and they were allegedly not used by the Respondent to deny Petitioner's RPTT refund request since they were generated after the date of such denial.

Respondent contends that the Petitioner's refund request is barred by the statute of limitations as the date of RPTT payment to the Respondent occurred on the date the Check was delivered to the Respondent via the City Register or the Business Center, which was either on August 9, 2011 or August 10, 2011.

#### CONCLUSIONS OF LAW

The Tribunal's Rules of Practice and Procedure (Rules) at 20 RCNY § 1-05 [d] [1] provide:

"After issue has been joined, any party may move for summary determination . . . . The motion 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 tribal issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party. The motion shall be denied if any party shows sufficient basis to require a hea[r]ing of any issue of fact . . . ."

The Filing Date and Deadline Calculator of Atkinson Baker Court Reporters provides the following information regarding a date exactly one year after Thursday, August 11, 2011:

"365 DAYS AFTER 8/11/2011 . . . Counting . . . All Days . . . Using . . . Holiday Schedule for New York . . . = Friday, August 10, 2012."<sup>8</sup>

Friday, August 10, 2012 was not a Holiday. Three hundred sixty five days after Thursday, August 11, 2011 is Friday, August 10, 2012.

The year 2012 was a leap year.

McKinney's General Construction Law § 58 provides the following regarding the calculation of one year in a Leap Year:

"The term year in a statute, contract, or any public or private instrument, means three hundred and sixty-five days, but the added day of a leap year and the day immediately preceding shall for the purpose of such computation be counted as one day."

Code § 11-2108 [a] states:

"In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof."<sup>9</sup>

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<sup>8</sup>See *AtkinsonBaker COURT REPORTERS*, Filing Date and Deadline Calculator, <https://www.depo.com/resources/fdc.html> [accessed October 20, 2016]).

<sup>9</sup>See also RPTT Rules (19 RCNY) § 23-14.

Code § 11-2108 [b] provides the following with respect to the Tribunal's jurisdiction over RPTT refund matters:

"Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant . . . within ninety days from the mailing of a conciliation decision or the date of commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of . . . ."

Executive Memorandum dated August 7, 1992 shows the intent underlying New York State (State) Governor Mario M. Cuomo's approval of L.1992, chapter 808, amending the City Charter and Code, in relation to certain proceedings before, and appeals from decisions of, the City Tribunal, and through § 97 of chapter 808, amending certain language of subdivision [a] of Code § 11-2108 regarding the procedures that the Commissioner shall follow whenever an RPTT refund claim is made or denied.<sup>10</sup> The Memorandum provides:

"This legislation streamlines the administration of tax adjudication in New York City by conforming it generally to procedures established for State tax administration . . . ."<sup>11</sup>

New York State Compilation of Codes, Rules and Regulations (20 NYCRR) § 152.18 [b] provides the method for paying income tax due:

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<sup>10</sup>McKinney's Cons Laws of NY, Book 2, Ch. 808 at 2287, and § 97 at 2334.

<sup>11</sup>McKinney's Cons Laws of NY, Book 2, The Executive Memoranda Chs. 808 and 809 at 2927 [1992 ed].

"(1) Notwithstanding the provisions of section 152.12 of this Part, if payment is made in the form of check, money order or cash, and is delivered in person to a district office of the Department of Taxation and Finance, the date on which the check, money order or cash is received will be considered the date of payment unless any check presented for payment is returned dishonored."

Code § 11-2116 [e] provides the following regarding limitations of time:

"When the last day prescribed under authority of this chapter (including any extension of time) for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday."

Code § 11-2104 provides the following regarding the payment of RPTT:

"The tax imposed hereunder shall be paid by the grantor to the commissioner of finance at the office of the register in the county where the deed is or would be recorded within thirty days after the delivery of the deed by the grantor to the grantee but before the recording of such deed . . . ."

Code § 11-2105 [a] provides the following regarding the filing of the RPTT return:

"A joint return shall be filed by both the grantor and the grantee for each deed whether or not a tax is due thereon. Such return shall be filed with the commissioner of finance within thirty days after the delivery of the deed by the grantor to the grantee but before the recording of such deed . . . . Upon the filing of such return for a deed, evidence of the filing shall be affixed to the deed by the register."

The commissioner of finance may provide for the use of stamps as evidence of payment and that they shall be affixed to the deed before it is recorded . . . ."

Code § 11-2105 [f] provides the following regarding the timing of the required RPTT payment:

"The payment of, and the filing of returns relating to, the taxes imposed hereunder, shall be required as a condition precedent to the recording or filing of a deed . . . effecting a conveyance or transfer subject to such taxes."

RPTT Rules § 23-08 [a] provides:

"The tax shall be paid by the grantor to the Commissioner of Finance at the office of the Register in the county where the deed is or would be recorded within thirty days after the delivery of the deed by the grantor to the grantee but before the recording of such deed . . . . Payment of the tax may be made in cash, or by certified check, money order or draft drawn to the order of the Commissioner of Finance."

RPTT Rules § 23-14 [b] provides:

" . . . (2) . . . [t]he application must be accompanied by: . . .

(i) A cancelled check or other evidence of payment of the tax by the applicant to the Commissioner of Finance; . . . Where the payment of the tax is made by check and the check cannot be presented as evidence of payment, a photostatic copy thereof, showing both the front and back of the check, will be accepted in lieu thereof . . . ."

Contrary to Petitioner's claims, pursuant to Code § 11-2108 [b] the Tribunal does have jurisdiction to decide the application of the one year statute of limitations applicable to RPTT refund



matters.

Petitioner's RPTT refund application based on an alleged RPTT payment date of August 11, 2011 would be untimely because the refund request dated August 13, 2012 was beyond one year from the date of payment. Petitioner erroneously believes, and Respondent does not dispute, that August 11, 2011 fell on a Friday and that one year after that day fell on a Saturday, August 11, 2012. 2012 was a leap year and the New York State General Construction Law § 58 excludes the calculation of leap year days as extra days. Petitioner's argument that August 11, 2011 should be considered the date of RPTT payment is irrelevant. Petitioner's remaining claim is that its RPTT refund request was timely because it occurred within one year from a date of RPTT payment on August 15, 2011.

The parties stipulated that the Petitioner paid the RPTT due by submitting the Check to the Respondent. Petitioner admitted that the Check was not certified, that the Check along with the documents necessary for the recording of the deed were hand delivered to the City Register, that Respondent received the Check prior to August 11, 2011, and that the payment of the Check was honored by the Petitioner's bank. The decisive issue in this case is determining pursuant to Code § 11-2108 [a] and RPTT Rules § 23-14 when the RPTT "payment" was made in order to decide if the one-year period of limitations had tolled.

The analysis to make this determination should begin by considering the language of Code § 11-2108 [a] and RPTT Rules § 23-14.<sup>12</sup> Taxpayers submitting uncertified checks to the City

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<sup>12</sup>See *Matter of Shannon*, 25 NY3d 345, 351 [2015] (" 'It is fundamental that a court, interpreting a statute, should attempt to effectuate the intent of the Legislature' . . . . In as much, '[a]s the clearest indicator of legislative

Register to pay for RPTT could interpret the meaning of the word "payment"<sup>13</sup> in these statutes to mean that payment with an uncertified check occurs at the moment the check is tendered to the City. A check as a negotiable instrument is equivalent to the delivery of money, and the RPTT Rules and RPTT Return Instructions provide that the Respondent accepts various types of negotiable instruments as payment. However, some taxpayers making these payments could interpret such word to mean that payment occurs at the moment the taxpayers' banks transfer money to the City. Reasonable persons could find different meanings for payment. Therefore, if payment is made by check and good arguments can be made for either of two contrary positions as to such meanings, the term "payment" in Code § 11-2108 [a] and RPTT Rules § 23-14 could be considered ambiguous.<sup>14</sup> The Code and RPTT Rules do not provide a definition of the time of payment when it is made by check.<sup>15</sup>

Contrary to Petitioner's assertion, Code §§ 11-2104 and 11-

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intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof' . . . . 'We are also guided in our analysis by the familiar principle 'that a statute . . . must be construed as a whole and that its various sections must be considered together and with reference to each other' . . . [o]f course, 'where the language is ambiguous, we may examine the statute's legislative history' . . . ."

<sup>13</sup>Black's Law Dictionary, Sixth Edition, provides the following definition for the word Payment: "Payment is a delivery of money or its equivalent in either specific property or services by one person from whom it is due to another person to whom it is due . . . ."

<sup>14</sup>Black's Law Dictionary, Sixth Edition, defines Ambiguity: "Ambiguity exists if reasonable persons can find different meanings in a statute, document, etc.

<sup>15</sup>Shannon, 25 NY3d 35 at 351.

2105 [f] require that the RPTT payment shall occur before the recordation or filing of the deed. In this case the Recording Cover Page shows that the "Recorded/Filed" date of the deed was August 15, 2011, which was a date after the Check funds were transferred to the Respondent on August 11, 2011, as alleged by the Petitioner, and a date after the date that the Respondent received the Check (either on August 9, 2011 or August 10, 2011).

Therefore, we must look at the legislative intent of Code § 11-2108 [a] to determine its correct statutory interpretation.<sup>16</sup> L. 1992, chapter 808, § 97, did not directly amend the first sentence of the Code § 11-2108 [a], which contains the word "payment." The Executive Memorandum establishes that the purpose of the State Legislature regarding Code § 11-2108 is for the City's administration of tax adjudication to conform generally to the New York State tax administration procedures. It is clear that the legislative intent for this Code section is to conform the City's legal process of resolving a dispute involving RPTT refunds to the State administrative procedures. Since the State Tax Law relating to real property tax refunds does not provide guidance regarding where payment is deemed to be made if payment

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<sup>16</sup>See *Matter of Am. Comm. Tech. Inc. v State of N.Y. Tax Appeals Trib.*, 185 AD2d 79, 81 [3d Dept. 1993] ("Undoubtedly, the primary consideration in the interpretation of all statutes is to discern and apply the will of the Legislature . . . ."); *Sutka v Conners*, 73 NY2d 395, 403 [1989] ("In matters of statutory interpretation generally . . . legislative intent is 'the great and controlling principle.' . . . Legislative intent may be discerned from the face of a statute, but an apparent lack of ambiguity is rarely, if ever, conclusive . . . . Generally, inquiry must be made of the spirit and purpose of the legislation, which requires examination of the statutory context of the provision as well as its legislative history . . . .").

is made by check, the approach followed by the State Division of Tax Appeals to review the procedures applicable to refunds of State and Federal income tax will be considered to analyze the validity of the request for the RPTT refund.<sup>17</sup> State Tax Regulation § 152.18 [b] provides clear guidance regarding the New York State's determination of when a payment of income tax is deemed to occur if the payment is made by check, stating:

" . . . if payment is made in the form of check . . . and is delivered in person to a district office of the Department of Taxation and Finance, the date on which the check . . . is received will be considered the date of payment unless [the] check presented for payment is returned dishonored."

Further, since there is limited State case law precedent with respect to when "payment" of RPTT is made if payment is made by check, the federal case law relating to refunds of personal

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<sup>17</sup>Solely as an illustration and not as precedent see e.g. *In the Matter of the Petition of Francis Greenburger and RS & P/WVII Limited Partnership*, 1994 WL 509052 (NY St Div of Tax Appeals DTA 810773) (The Tax Appeals Trib. (Appeals Trib.) confirmed that the Administrative Law Judge (ALJ) correctly relied on the decision of the Appeals Trib. in *Matter of the Petition of Laurence B. Rand as Guardian of Hope Sayles*, 1990 WL 204881 (NY St Div of Tax Appeals DTA 804459), when, after emphasizing the limited amount of State precedent, determined to examine federal cases relating to refunds of personal income tax to analyze the validity of an informal request for real property tax refund under Article 31 of the New York State Tax Law, which is not patterned after any Federal tax. The Appeals Trib. reversed the ALJ's determination on other grounds); *In the Matter of the Petition of Dean Witter Reynolds, Inc.*, 2006 WL 2525496 (NY St Div of Tax Appeals DTA 819917) (The Tax Appeals Trib. affirmed the determination of the ALJ involving a Petitioner's application for a refund of overpayment of sales tax. In that determination the ALJ noted that since there was no State statutory definition of payment, he decided to consider the Federal statute and case law to interpret what is meant by payment.).

tax is persuasive authority with respect to the timeliness of Petitioner's application to the Respondent for an RPTT refund.

The Federal courts have frequently upheld federal statutes with similar language to State Statute § 152.18 [b] as reasonable and have ruled that when federal income tax is paid with an uncertified check, later honored, the payment occurs at the time that the check is delivered to the tax collector and not when the check is deposited or collected.<sup>18</sup> In 1930, the U.S. Court of Claims in *Second Natl. Bank of Saginaw v U.S.*<sup>19</sup> held "that the Treasury regulation which fixes the day on which the collector receives the check in payment of taxes as the date of payment[,] unless the check is returned dishonored[,] is a reasonable and valid regulation." The court noted:

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<sup>18</sup>See *Remington Rand, Inc. v U.S.*, 57 F2d 1069 [D Del 1932] (the court cited *Second Natl. Bank of Saginaw v U.S.*, 42 F2d 344 [Ct Cl 1930], after it emphasized that the "plaintiff's remaining contention that payment [cannot] be made by an uncertified check on the date of its delivery is conclusively answered by the Act of Congress (26 U.S.C.A., section 110) and the proof in this case that the check was honored."); *Second Natl. Bank of Saginaw v U.S.* at 345 (the court emphasized that, "section 1325 of the Revenue Act of 1921 (42 Stat. 316), which, after providing that collectors may receive uncertified checks 'in payment of' income . . . taxes," also provided that if the check so received is not paid by the bank on which it is drawn the person tendering the check 'shall remain liable for the payment of the tax'." The court held that, "[t]he plain meaning of the statute is that the check is received as payment of the tax on condition that it is afterwards paid by the bank on which it is drawn" based on the reasoning that, "it would be the greatest inconvenience of the taxpayer if checks were not accepted in payment of the tax, and the statute was enacted to avoid this inconvenience."); *York v U.S.*, 636 F Supp 544 [1986] (Plaintiff cited 26 U.S.C. § 6311 [b] [1], which provided "that a taxpayer who tender[ed] a check which is dishonored remains liable for the payment of the tax." The court reasoned that, "Section 6311 does not state that payment is received once a check clears" and "[t]o so find would put a taxpayer in a very precarious position" because "[e]ven if a taxpayer paid his tax on time, his check might not clear immediately, through no fault of his own" and "[c]onceivably, he could be penalized for banking delays.")

<sup>19</sup>*Second Natl. Bank of Saginaw* at 345.

"[i]f the date of payment is not when the check was received but when paid by the bank, in a very great number of cases the taxpayer would be liable for the penalty imposed by the law for not making the payment when the tax was due, although he had fully complied with the statute with reference to payments by sending the commissioner a check before the due date of the tax."<sup>20</sup>

Similarly, in *Lovell Clay Products Co. v U.S.*<sup>21</sup> the court held "that the time of actual receipt by the District Director of the check in payment of taxes was the date of the payment of the tax" and therefore, the taxpayer was not entitled to a refund of the tax paid as his claim was filed too late. In *Lovell* the court emphasized that the "identical question [presented in the case] ha[d] been before the courts many times and it appear[ed] to be a uniform rule that the time of actual receipt of the check by the District Director is the date of the payment of the tax."<sup>22</sup> Also, in that case the court opposed following

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<sup>20</sup>*Second Natl. Bank of Saginaw* at 345.

<sup>21</sup>190 F Supp 317 [1961].

<sup>22</sup>(In *Lovell* "[t]he parties stipulated that the sole issue was whether the claim for refund was filed within 'two years from the time the tax was paid.'" The taxpayer on January 18, 1957 submitted to the Collection Officer for the Internal Revenue Service (IRS), which under Internal Revenue Code § 6151 had authority as a delegate of the Secretary to receive payment for internal revenue taxes, a check for the payment of an income tax liability. On January 21, 1957, the District Director's office received the daily report with the taxpayer's check attached thereto. On January 23, 1957, the aforesaid daily report and the check were entered on the document register, . . . and sent to the cashier's office for credit to the taxpayer's account and subsequent deposit of the collection. On January 26, 1959, the District Director received from the taxpayer a claim for refund dated January 23, 1959 for the tax liability paid. The IRS disallowed the refund claim on the basis that it was not timely filed, claiming that the tax was paid on January 18, 1957, when the check was handed to the Collection Officer, or in the alternative, that the tax was paid not later than January 21, 1957, when the check was received at the District Director's office. The taxpayer contended that the tax was

taxpayer's contention of conditioning payment on the receipt and acceptance of the check in the cashier's office of the District Director, or by requiring that the check and report be entered on the document register of the District Director's office. In reaching its conclusion the court reasoned:

"The unreasonableness of either of these requirements is apparent. During the rush season, for example, it is conceivable that a check might be received by the Director in due time, but that there could be a delay amounting to days or weeks before it would be entered upon the register. Consequently, the taxpayer's payment would be deemed delinquent through no fault of his and he would be subject to the penalty imposed by law, although he had fully complied with the statute with reference to payment by sending his check to the Director before the due date of the tax. Stated conversely, the taxpayer would be liable for a penalty for doing precisely what the statute authorized. Certainly this result was not intended by Congress and I think that it would be an unreasonable construction of the statute not justified by its language."<sup>23</sup>

The manifest intent of Code § 11-2108 is that the State legislature intended to maintain uniformity of the State and the

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not paid until January 23, 1957, when the check was received and accepted by the cashier's office of the District Director, or, at the very earliest, when the check and report in conjunction with its collection were entered on the document register of the Director's Office on January 23, 1957. The court held that District Director's receipt of the check on January 21, 1957 was the tax payment date and that the taxpayer's tax refund request was untimely.)

<sup>23</sup>Lovell at 319.

City in the reasonable administration of legal processes to resolve disputes involving RPTT refunds, and consequently, avoid the unjust result of assessing taxpayers penalties for late payments if the date of payment is not when the check is received by the City but when a deed is later recorded by the City or when a check is later paid by the taxpayer's bank. Petitioner's contention that Code § 11-2108 [a] and RPTT Rules § 23-14 have doubtful meaning is not sustained.

It is concluded that pursuant to Code § 11-2108 [a] and RPTT Rules § 23-14 the Petitioner's RPTT payment to the Respondent occurred when the Check was delivered to the City Register, and not when the City recorded the deed or stamped the Recording Cover Page with the "Recorded/Filed" date.<sup>24</sup> This is supported by the clear requirements stated in Code §§ 11-2104 and 11-2105 [f] for payment to occur before recordation of the deed.

Although it is unfortunate that the City Register cannot provide evidence proving when the Check was physically delivered to its office, the ACRIS Reports establish with certainty that the Respondent had obtained possession of the Check and processed it through the franking system, at the latest, on August 10, 2011. The Petitioner does not dispute that the Respondent received the Check prior to August 11, 2011. Petitioner claims

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<sup>24</sup>Since the date the Petitioner delivered the Check to the City is the date of RPTT payment, the following considerations are considered irrelevant: the date the RPTT return was filed, the information printed on the back of the Check, and the request in the October 5, 2015 Letter for a copy of the cancelled Check, which is required by RPTT Rules § 23-14 [b] to be part of the RPTT refund application. Also, as provided in the Hill July 21, 2015 Affidavit, the City does not use tax stamps to prove tax payments, and under Code § 11-2105 [a] the Commissioner's authority to use stamps as evidence of payment is optional.



that the ACRIS Reports are Respondent's internal documents, which lack credibility since some different information contained in these Reports allegedly shows that the Respondent can manipulate their content. However, the Petitioner has not presented sufficient proof to deem them inadmissible and they have been given proper weight in light of the sworn Affidavits submitted by the Respondent, which describe the process of their creation and their content. Petitioner's assertion is rejected.

Since the delivery date of the Check is when the payment occurs under Code § 11-2108 [a], the latest possible RPTT payment date on the facts presented is Wednesday, August 10, 2011, when the Check was received by the Department as reflected on the ACRIS system, and thus, the latest date that the Petitioner could have timely submitted a request for refund to the Commissioner was on or before Thursday, August 9, 2012, a date within one year from Wednesday, August 10, 2011.<sup>25</sup> As a result, Petitioner's application for a City RPTT refund, which the Department received on August 13, 2012 does not meet the one-year statutory filing requirement of the Code § 11-2108 [a] and RPTT Rules § 23-14. The RPTT refund request was filed untimely.

Petitioner contends that it is unfair that there is lack of guidance by the Respondent to taxpayers regarding when RPTT payments by uncertified checks are considered to be made if delivered in person. Petitioner supports this contention by providing that there is no date of RPTT payment shown on any publicly available document, there is no information provided in the Code, RPTT Rules or RPTT Return Instructions about how to get a receipt for the RPTT payment from the Business Center when

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<sup>25</sup>AtkinsonBaker ("365 days after August 10, 2011 = Thursday, August 9, 2012").

submitting payments directly to it, since the RPTT Rules and Return Instructions only indicate that RPTT payments shall be made to the City Register, and there are no signs at the City Register informing taxpayers that they may obtain a receipt if the RPTT payment is made at the Business Center. However, as the U.S. Supreme Court has made clear there is no equitable tolling of the statute of limitations period on tax refund claims.<sup>26</sup>

ACCORDINGLY, Summary Determination is granted in favor of Respondent, Petitioner's Cross-Motion for Summary Determination is denied, the Petition of Jamestown, L.P. as successor to Jamestown Chelsea Market, L.P. filed on May 23, 2014 is denied, and the Notice of Disallowance dated September 23, 2013 is sustained.

DATED: New York, New York  
November 4, 2016

/s/  
SANDRA M. RODRIGUEZ-DIAZ  
Administrative Law Judge

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<sup>26</sup>*U.S. v Brockamp*, 519 US 347 [1997] (Justice Breyer writing for the Court held that, "statutory limitations period on tax refund claims does not authorize equitable tolling.")