

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition

of

ROCKAWAY REALTY ASSOCIATES, L.P.

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
27, 2020.

DECISION
DTA NO. 830426

Petitioner, Rockaway Realty Associates, L.P., filed an exception to the determination of the Administrative Law Judge issued on June 27, 2024. Petitioner appeared by Goldberg Weprin Finkel Goldstein, LLP (Matthew Hearle, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Jennifer Hink-Brennan, Esq., of counsel).

Petitioner filed a brief in support of the exception. The Division of Taxation filed a letter brief in opposition. Petitioner filed a letter brief in reply. Oral argument was not requested. The six-month period for issuance of this decision began on December 19, 2024, the date that petitioner's letter brief in reply was received.

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

ISSUE

Whether the Division of Taxation properly calculated the New York City local mortgage recording tax due on a mortgage covering six parcels located within Queens and Nassau counties, pursuant to Tax Law § 260.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

1. On March 18, 2020, petitioner, Rockaway Realty Associates, L.P., executed a building loan mortgage, assignment of leases and rents and security agreement (mortgage) in favor of Capital One, National Association, in the original principal amount of \$10,000,000.00, covering three parcels located in Nassau County on Rockaway Boulevard, Woodmere, New York, and three parcels located in Queens County on Rockaway Boulevard, Rosedale, New York (six parcels). These six parcels were detailed as Section 39, Block 626, lots 21, 24 and 25 within Nassau County and Block 13895, lot 80 and Block 13907, lots 60 and 101 within Queens County.

2. In conjunction with the recording of the mortgage, petitioner paid a mortgage recording tax in the amount of \$280,000.00 to Queens County on July 27, 2020. The mortgage recording tax was computed as if all six parcels were located within Queens County. The Queens County tax was computed in the following manner:

Mortgage amount	\$10,000,000.00
Basic tax @ .50%	\$50,000.00
Additional tax @ .30%	30,000.00
Special additional tax @ .25%	25,000.00
New York City local tax @ 1.75%	<u>175,000.00</u>
Total tax	\$280,000.00

3. Petitioner filed form MT-15.1, mortgage recording tax claim for refund (refund claim), dated January 13, 2021, with the Division of Taxation (Division). Petitioner's refund claim requested a refund of the New York City local mortgage recording tax in the amount of \$164,442.95, based upon its claim that a portion of the New York City local mortgage recording

tax was overpaid on the Nassau County parcels. Nassau County does not impose the New York City local mortgage recording tax. In calculating the refund requested, petitioner “normalized the assessed value calculation method between Nassau and Queen [counties] to determine the ‘relative’ assessed values” for purposes of calculating the apportionment factor. Attachments to petitioner’s refund claim consisted of a form MT-15, mortgage recording tax return (form MT-15) and a total of three pages printed from the New York City data portal that contained information pertaining to the 2020-2021 final assessment “EXPLANATION OF ASSESSMENT ROLL” (2020-2021 final assessment roll information) for the borough of Queens, Block 13907, lot 101, Block 13907, lot 60 and Block 13895, lot 80. The 2020-2021 final assessment roll information for each of the three Queens County parcels included assessment information consisting of the property’s estimated market value (land and total),¹ the taxable/billable assessed value and the market value history. No supporting documentation was attached to the refund claim regarding the 2020-2021 final assessment roll for the three Nassau County parcels, i.e., their assessed and estimated market values and the equalization rate used by Nassau County.

4. On the form MT-15, petitioner calculated a New York City local mortgage recording tax due in the amount of \$10,557.05 for the Queens County parcels. In arriving at the New York City local tax due amount, petitioner utilized the estimated market values of the parcels located within the counties, rather than the assessed values determined by the counties. Specifically, petitioner determined the assessed value for the three Queens County parcels to be \$2,671,000.00, and the assessed value for the three Nassau County parcels to be

¹ The equalization rate used by Queens County does not appear on the 2020-2021 final assessment roll information for any of the Queens County parcels.

\$41,622,300.00,² with the total assessed value for the six parcels to be \$44,293,300.00. To calculate the local mortgage recording tax to be apportioned, petitioner multiplied \$175,000.00, i.e., the local tax to be apportioned, by the apportionment factor of .060326³ and determined \$10,557.05 in local tax to be due plus \$105,000.00 (\$50,000.00 [basic tax] + \$30,000.00 [additional tax] + \$25,000.00 [special additional tax]), for a total mortgage recording tax due in the amount of \$115,557.05.

5. The review of petitioner's refund claim was assigned to Joseph Mayer, an Excise Tax Technician II in the Division's audit division. Mr. Mayer has been employed by the Division for 25 years and has held his current title for 15 years. His responsibilities include the review and audit of mortgage tax refund claims. Additionally, Mr. Mayer assists the county clerks in their administration, collection, and distribution of the mortgage recording tax.

6. As part of his review of petitioner's refund claim, the auditor reviewed the mortgage. Based upon his review of the refund claim, the auditor determined that petitioner calculated and paid mortgage recording tax in the amount of \$280,000.00 that included a New York City local mortgage recording tax in the amount of \$175,000.00 initially, as if all six parcels were located within Queens County, and then filed the refund claim for the portion of the local mortgage recording tax overpaid on the Nassau County parcels. The auditor also determined that in calculating the local mortgage recording tax due as part of its refund claim, petitioner "normalized" the assessed value calculations between Nassau and Queens counties to determine the "relative" assessed values for each county.

² The method and calculation used by petitioner to determine the estimated market values of the Nassau County parcels is not part of the record.

³ In determining the apportionment factor, form MT-15, schedule C, line 19, column C directs the assessed value of the 3 Queens parcels be divided by the total assessed value of the six parcels. Specifically, \$2,671,000.00 divided by \$44,293,300.00 results in an apportionment factor of .060303, not .060326 as incorrectly listed on the form MT-15.

7. Based upon his review of the refund claim, the auditor recalculated the New York City local mortgage recording tax due by using the assessed valuations for the six parcels taken from the last assessment rolls for both counties to apportion the tax due as required by Tax Law § 260.

The Division's recalculation follows:

“Queens/Nassau County Tax Computation:

Mortgage Amount	\$10,000,000.00
Basic Tax @ .50%	\$ 50,000.00
Additional Tax @ .30%	30,000.00
Special Additional Tax @ .25%	25,000.00
New York City Local Tax	<u>129,986.85</u>
Total Tax	\$234,986.85”

In determining the New York City local tax amount of \$129,986.85, the Division used the following assessed valuations and calculations:

“Queens County assessed valuations:

<u>Block</u>	<u>Lot</u>	<u>Amount</u>
13895	80	\$ 644,400.00
13907	60	371,250.00
13907	101	<u>186,300.00</u>
Total		\$ 1,201,950.00

Nassau County assessed valuations:

<u>Sec.</u>	<u>Block</u>	<u>Lot</u>	<u>Amount</u>
39	626	21	\$ 146,945.00
39	626	24	150,497.00
39	626	25	<u>118,781.00</u>
Total			\$ 416,223.00

Total Queens/Nassau assessed valuation: \$1,618,173.00

$\$1,201,950.00 / 1,618,173.00 = .742782 \times \$175,000.00 = \$129,986.85$ (NYC local tax)”

8. The Division issued an order of refund (order), dated February 3, 2021, that allowed a refund in the amount of \$45,013.15 to petitioner for the New York City local mortgage recording tax that pertained to the three Nassau County parcels. In its order, the Division found, among other things, that its overpayment computation was “based upon the relative assessed values of the six connected parcels which make up the property secured by the mortgage.” The order directed Queens County to issue the refund to petitioner.

9. By letter, dated February 5, 2021, the Division notified petitioner that its refund claim in the amount of \$164,442.95 was partially approved in the amount of \$45,013.15, and that the balance of the refund claim in the amount of \$119,429.80 was denied (partial denial of petitioner’s refund claim). This letter provided the following reason for the Division’s denial of the balance of petitioner’s refund claim:

“Your corresponding Mortgage Recording Tax Return (NY Form MT-15), [sic] utilized market valuations rather than assessed valuations. Pursuant to Article 11, Section 260 of the New York State Tax Law, the relative assessed values of a property located wholly within the state are utilized in the apportionment, the allocation of mortgage recording tax between separate New York tax districts and localities.”

The letter also advised that an attached addendum contained the refund computation⁴ and Queens County would process and mail the respective refund to petitioner. A copy of the order was also enclosed.

10. The record does not include any documentation setting forth the 2020-2021 equalization rates for either Queens County or Nassau County.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge began her determination by citing Tax Law §§ 253 (1), 253-a (4) and 260 with respect to New York City mortgage recording tax where real property

⁴ The details of the refund computation are set forth in finding of fact 7.

covered by a mortgage subject to such tax is situated within New York State but within and without New York City. The Administrative Law Judge found that the method of apportionment used by the Division is expressly provided for in Tax Law § 260 and was explicitly affirmed by the Court of Appeals in *Matter of Long Is. Light. Co. v State Tax Comm.*, 45 NY2d 529 (1978). The Administrative Law Judge did not find merit in petitioner's contention that the disparity in the raw valuations creates fictitious value for the three Queens County parcels that irrationally inflate the New York City mortgage recording tax due in this matter. Instead, the Administrative Law Judge noted that *Matter of Long Is. Light. Co.* properly addressed the issue of whether equalization rates should be applied to reflect real value in the apportionment of mortgage recording tax between New York City (Queens) and Nassau County. Accordingly, the Administrative Law Judge denied the petition of Rockaway Realty Associates, L.P. and sustained the Division's partial denial of petitioner's refund claim in the amount of \$119,429.80.

ARGUMENTS ON EXCEPTION

Petitioner essentially raises the same arguments on exception as below. Petitioner argues that the denial of petitioner's request for full refund by the Administrative Law Judge was erroneous. Petitioner contends that *Matter of Long Is. Light. Co.* is distinguishable from the present case. Petitioner argues that the facts present in *Matter of Long Is. Light. Co.* indicate something more than mere inexactness of a tax assessment. Petitioner asserts that the application of Tax Law § 260 disregards the facts and results in an arbitrary outcome. Petitioner notes that the interpretation of Tax Law § 260 by the Administrative Law Judge ignores the use of the term "relative" in the statute. Petitioner states that the use of the word "relative" implies the use of equalization rates. Petitioner suggests that had the statute included the word "respective" instead

of “relative,” the conclusion would have been understandable. Accordingly, petitioner asserts that the Administrative Law Judge erred in upholding the denial of refund to petitioner.

The Division asserts that the Administrative Law Judge correctly decided the relevant issues and that the determination should be affirmed. The Division notes that petitioner litigated the exact same issue in a previous case before the Division of Tax Appeals that resulted in a determination in favor of the Division. The Division argues that there have been no intervening legislative changes in the subsequent 20 years since the mortgage at issue has been refinanced. The Division asserts that it has not deviated from its position and has applied the law consistently, and petitioner’s interpretation of Tax Law § 260 does not accord with the plain meaning of the text thereof. The Division argues that petitioner has failed to meet the heavy burden of establishing that the Division’s interpretation of Tax Law § 260 is irrational or inconsistent. Accordingly, the Division contends that the determination of the Administrative Law Judge be affirmed, and the partial denial of petitioner’s refund claim be sustained.

OPINION

Article 11 of the Tax Law imposes excise taxes on the recording of mortgages on real property situated in the State of New York. The taxes imposed under Article 11 include the basic tax (Tax Law § 253 [1]), the special additional tax (Tax Law § 253 [1-a]), the additional tax (Tax Law § 253 [2] [a]) and the New York City tax (Tax Law § 253-a). While the tax is imposed on the privilege of recording the mortgage, the basis for computation of the tax is the amount of principal debt or obligation secured by the mortgage as of the date of execution (*see e.g.* Tax Law § 253 [1]). The tax is payable on the recording of the mortgage and is payable to the recording officer of the taxing district where the real property or any part thereof is located (Tax Law § 257).

Tax Law § 253-a (4) provides that where real property covered by a mortgage subject to such tax is situated within New York State but within and without New York City, the amount of tax due and payable to the City “shall be determined in a manner similar to that prescribed in the first paragraph of [Tax Law § 260] which concerns real property situated in two or more counties.” When a mortgage covers real estate located in more than one tax district in New York, the mortgage recording tax must be divided between the districts based on the assessed values of the properties in each district, as listed on the most recent assessment rolls (*see* Tax Law § 260). If a property is not individually assessed or has changed significantly (e.g., through improvements), then appraisals may be used to determine the apportionment of tax due (*see id.*).

Petitioner executed a building loan mortgage in the original principal amount of \$10,000,000.00, covering three parcels in Nassau County and three parcels in Queens County (*see* finding of fact 1). The dispute is centered around how the mortgage is apportioned between the two counties since each county has a different tax rate. Petitioner paid a mortgage recording tax in the amount of \$280,000.00 to Queens County on July 27, 2020 (*see* finding of fact 2). The mortgage recording tax was computed as if all six parcels were located within Queens County (*id.*).

Petitioner later requested a refund of the New York City local mortgage recording tax in the amount of \$164,442.95, based upon its claim that a portion of the New York City local mortgage recording tax was overpaid on the Nassau County parcels (*see* finding of fact 3). Nassau County does not impose the New York City local mortgage recording tax (*id.*). Petitioner used estimated market values to apportion the tax between counties, whereas the Division’s auditor used assessed values from the latest assessment rolls as required by Tax Law § 260.

Based on the auditor's review of petitioner's claim, the Division notified petitioner that its refund claim in the amount of \$164,442.95 was partially approved in the amount of \$45,013.15, and that the balance of the refund claim in the amount of \$119,429.80 was denied (partial denial of petitioner's refund claim) (*see* finding of fact 9).

On exception, petitioner requests that the plain language of Tax Law § 260 be disregarded. Specifically, petitioner contends that there is an ambiguity in the authority that the Division is relying on. Tax Law § 260 provides in pertinent part:

“When the real property covered by a mortgage is situated in more than one tax district, the state tax commission shall apportion the tax paid on such mortgage between the respective tax districts upon the basis of the *relative* assessments of such real property as the same appear on the last assessment-rolls” (*emphasis added*).

Petitioner questions the Division's interpretation of the statute and asserts that the word “relative” was included in the statute to support different assessments based on different equalization rates. Petitioner's argument is without merit. “[W]hen the language of a tax statute is unambiguous, it should be construed so as to give effect to the plain meaning of the words used (citation omitted)” (*Matters of Nicolla and Rosen*, Tax Appeals Tribunal, July 28, 2021, citing *New York State Assn. of Counties v Axelrod*, 213 AD2d 18, 24 [3d Dept 1995], *lv dismissed* 87 NY2d 918 [1996]). “Every word must, if possible, be given meaning” (*id.* citing *Sanders v Winship*, 57 NY2d 391, 396 [1982]). This is because “[t]he statutory text is the clearest indicator of legislative intent” (*id.* citing *Matter of DaimlerChrysler Corp. v Spitzer*, 7 NY3d 653, 660 [2006]). We find that there is no ambiguity in the statute. Tax Law § 260 expressly directs the apportionment of tax “upon the basis of the relative assessments” of the property as they appear “on the last assessment-rolls.” Therefore, petitioner's contention that Tax Law § 260 is ambiguous is rejected.

Petitioner also argues that the Administrative Law Judge's reliance on *Matter of Long Is. Light. Co.* was erroneous. Petitioner asserts that the application of different equalization rates between Nassau and Queens County creates a false value that inequitably creates tax liability that does not exist. We disagree. Notwithstanding the fact that petitioner argues that application of equalization rates between Nassau County and Queens County is unjust and uneven, the Court of Appeals in *Matter of Long Is. Light. Co.* stated:

“It first should be recognized that, subject to constitutional inhibitions, the Legislature has very nearly unconstrained authority in the design of taxing impositions. From another perspective, fairness and equity are not the principal criteria against which the validity of tax statutes is to be determined” (*Matter of Long Is. Light. Co.* at 535).

Here, the apportionment of the tax paid on recording of the subject mortgage was based upon the relative assessed values of the premises in Nassau County and Queens County. Considering the unambiguous language of Tax Law § 260 and the Court of Appeals' decision in *Matter of Long Is. Light. Co.*, we find that the Division properly calculated the New York City local mortgage recording tax due pursuant to Tax Law § 260.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Rockaway Realty Associates, L.P. is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Rockaway Realty Associates, L.P. is denied; and
4. The Division of Taxation's partial denial of petitioner's refund claim in the amount of \$119,429.80, by letter dated February 5, 2021, is sustained.

DATED: Albany, New York
June 5, 2025

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

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

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