

RESOLUTION NO. 2016087

RE: DENIAL OF A REFUND APPLICATION OF A TAX BILL

APPLICANT: Mitchell R. Schrage and Daria Schrage
425 E. 58th Street, Apt. 45-A
New York, NY 10022

ACCOUNT NO. 135200-6970-00-030470-0000

Legislators FLESLAND, SAGLIANO, and JETER-JACKSON offer the following and move its adoption:

WHEREAS, there is an assessment on the assessment roll for the Town of Stanford for 2006, 2007, 2008, 2009, 2010, 2011, 2012 under the name of Mitchell R. Schrage and Daria Schrage Account no: 135200-6970-00-030470-0000 , and

WHEREAS, the owner of said parcel, by application attached hereto, has applied for a refund of real property taxes on the basis of a clerical error, and

WHEREAS, pursuant to section 556 of the Real Property Tax Law, the County Director of the Real Property Tax Service Agency has investigated this claim, and has found that a clerical error does not exist, and

WHEREAS, attached hereto is the written report of said Director together with his recommendation that the application be denied by the County Legislature, and

WHEREAS, the County Legislature has agreed that the clerical error does not exist, now, therefore, be it

RESOLVED, that the application received February 4, 2016 relating to account no. 135200-6970-00-030470-0000 for a corrected tax bill is hereby denied, and be it further

RESOLVED, that the Clerk of the Dutchess County Legislature be and is hereby authorized and directed to send a copy of this resolution to the applicant, the Commissioner of Finance and to the Town Tax Collector.

CA-046-16
CEN/MB/kvh/G-0194
03/10/16

STATE OF NEW YORK
COUNTY OF DUTCHESS

ss:

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 11th day of April 2016, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 11th day of April 2016.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

MARCUS J. MOLINARO
COUNTY EXECUTIVE



HEIDI SEELBACH
COMMISSIONER
ERIC AXELSEN
DIRECTOR

COUNTY OF DUTCHESS
DEPARTMENT OF FINANCE
REAL PROPERTY TAX SERVICES DIVISION

**Dutchess County Real Property Tax Investigative Report for Denial of an
Application for Correction or Refund**

Parcel:	135200-6970-00-030470-0000	Mailing:	
Owners:	Schrage, Mitchell & Daria		425 E. 58 th St. Apt 45-A
Location:	205 Carpenter Hill Rd.		New York, NY 10022

March 4, 2016

Application for refund of County and Town taxes for assessment roll years 2006 through 2012 (tax rolls dated January 2007 through January 2013.)

Application for refunds based on assessment roll years 2013 through 2015 is addressed in a separate report.

An application for correction and refund of taxes was made based on a claimed "Clerical Error" as defined in RPTL §550(2)(g). The property owner claims that the assessor made an error in mathematics where the square footage of living area of the structure was miscalculated, resulting in an error in assessment. That is: \$200 per square foot times 500 square feet, or 100,000 of full value, to be equalized and applied against the appropriate tax rates for the period.

Real Property Tax Law clearly puts a limitation on the time within which a property owner may file for administrative corrections of errors and refunds of taxes:

RPTL §556(1)(a) "Pursuant to the provisions of this section, an appropriate tax levying body may refund to any person the amount of any tax paid by him or her, or portion thereof, as the case may be, or may provide a credit against an outstanding tax (i) where such tax was attributable to a clerical error or an unlawful entry and application for refund or credit is made within three years from the annexation of the warrant for such tax, ..."

The application for refunds, received by us February 4, 2016, clearly does not meet the statutory requirement. Refunds for taxes paid on tax rolls dated prior to January of 2014 cannot be made. I recommend that the request for refunds based on tax rolls dated prior to 2014 be denied.

Handwritten signature of Eric Axelsen in black ink.

Eric Axelsen
Director of Real Property Tax Services



NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE
OFFICE OF REAL PROPERTY TAX SERVICES

RECEIVED
RP-556 (1/06)

2016 FEB -4 AM 9:43

APPLICATION FOR REFUND AND CREDIT OF REAL PROPERTY TAXES
FOR THE YEAR(S) 20 _____

REAL PROPERTY
TAX SERVICES

Part I: To be completed in duplicate by Applicant. For refund or credit of real property tax, submit both copies to County Director of Real Property Tax Services (in Nassau and Tompkins Counties, submit to Chief Assessing Officer), or in a village which has retained its assessing unit status, submit to the village assessor or chairman of village board of trustees. The application must be submitted within three years of the annexation of the warrant for the collection of such tax. For an "unlawful entry" as defined in Sec. 550(7)(a) of the Real Property Tax Law, attach statement signed by assessor or majority of board of assessors substantiating that assessor(s) have obtained proof that parcel should have been granted tax exempt status on tax roll. (See definitions on reverse side).

Mitchell & DARIA SCHRAGE
1a. Name of Owner

Day 212-506-1960 Evening 212-826-0939
2. Telephone Number

425 E 58th ST, 45A, NY NY 10022
1b. Mailing Address

205 Carpenter Hill Rd
3. Parcel Location (if different than 1b.)
STANFORDVILLE, NY

Mschrage@Kasowitz.com
4. E-mail Address (optional)

Property Type 241 Rural Space, Res + Ag / 6970.00.030470.0000
4. Description of real property as shown on tax roll or tax bill (Include tax map designation)

5. Account No. N/A 6a. Amount of taxes paid or payable * 2006-2015 6b. Date of payment (if paid) *
(as appears on tax bill)

7. I hereby request a refund or credit of real property taxes levied for the year(s) * by State / County / Town of Putnam / Stanford
for the following reasons (use additional sheets if necessary): * See Schedule Attached
* Insert name of village, county, city, school district; town in Westchester County

2/3/2016
Date

[Signature]
Signature of Applicant

PART II: For use by COUNTY DIRECTOR, VILLAGE ASSESSOR: Attach written report including documentation and recommendation (Include type of error as defined in Sec. 550)

Date application received: 2/4/16 Date warrant annexed: _____

Last day for collection of taxes without interest: Paid

Recommendation: Approve application* Deny Application *

3/2/2016
Date

[Signature]
Signature of Official

* If box is checked, this copy is for assessor and board of assessment review of city/town/village of _____ which are to consider attached report and recommendation as equivalent of petitions filed pursuant to section 553.

PART III: For use by TAX LEVYING BODY or OFFICIAL DESIGNATED BY RESOLUTION _____ :
(Insert Number or Date)

APPLICATION APPROVED (Check reason) Clerical error Unlawful entry Error in essential fact

Amount of taxes paid: \$ _____ Amount of taxes due: \$ _____

Amount of refund or outstanding tax to be credited: \$ _____

APPLICATION DENIED Reason: _____

Date

Signature of Chief Executive Officer
or Official Designated by Resolution

RESOLUTION NO. 2016088

RE: DENIAL OF A REFUND APPLICATION OF A TAX BILL

APPLICANT: Mitchell R. Schrage and Daria Schrage
425 E. 58th St., Apt. 45-A
New York, NY 10022

ACCOUNT NO. 135200-6970-00-030470-0000

Legislators FLESLAND, SAGLIANO, and JETER-JACKSON offer the following and move its adoption:

WHEREAS, there is an assessment on the assessment roll for the Town of Stanford for 2013, 2014 and 2015 under the name of Mitchell R. Schrage and Daria Schrage Account no: 135200-6970-00-030470-0000 , and

WHEREAS, the owner of said parcel, by application attached hereto, has applied for a refund of real property taxes on the basis of a clerical error, and

WHEREAS, pursuant to section 556 of the Real Property Tax Law, the County Director of the Real Property Tax Service Agency has investigated this claim, and has found that a clerical error does not exist, and

WHEREAS, attached hereto is the written report of said Director together with his recommendation that the application be denied by the County Legislature, and

WHEREAS, the County Legislature has agreed that the clerical error does not exist, now, therefore, be it

RESOLVED, that the application received February 4, 2016 relating to account no. 135200-6970-00-030470-0000 for a corrected tax bill is hereby denied, and be it further

RESOLVED, that the Clerk of the Dutchess County Legislature be and is hereby authorized, and directed to send a copy of this resolution to the applicant, the Commissioner of Finance and to the Town Tax Collector.

CA-047-16
CEN/MB/kvh/G-0194
03/10/16

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 11th day of April 2016, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 11th day of April 2016.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

MARCUS J. MOLINARO
COUNTY EXECUTIVE



HEIDI SEELBACH
COMMISSIONER
ERIC AXELSEN
DIRECTOR

COUNTY OF DUTCHESS
DEPARTMENT OF FINANCE
REAL PROPERTY TAX SERVICES DIVISION

**Dutchess County Real Property Tax Investigative Report for Denial of an
Application for Correction or Refund**

Parcel:	135200-6970-00-030470-0000	Mailing:	
Owners:	Schrage, Mitchell & Daria	425 E. 58 th St. Apt 45-A	
Location:	205 Carpenter Hill Rd.	New York, NY 10022	

March 4, 2016

Application for refund of County and Town taxes for assessment roll years 2013 through 2015 (tax rolls dated January 2014 through January 2016.)

Application for refunds based on assessment roll years 2006 through 2012 is addressed in a separate report.

An application for correction and refund of taxes was made based on a claimed "Clerical Error" as defined in RPTL §550(2)(g). The property owner claims that the assessor made an error in mathematics where the square footage of living area of the structure was miscalculated, resulting in an error in assessment. That is: \$200 per square foot times 500 square feet, or 100,000 of full value to be equalized and applied against the appropriate tax rates for the period.

- 1) RPTL §550(2)(g) Defines a clerical error as "an entry on an assessment or tax roll which is incorrect by reason of an arithmetical mistake by the assessor appearing on the property record card, field book or other final work product of the assessor;"

The property owner claims that there are 500 fewer Square Feet of Living Area than described on the assessor's property record card, and has provided both former and updated property cards as proof. This is not an error in mathematics, however, but an error in the description of the real property. No error in mathematics is shown, and so does not meet the criteria set in the law.

The assessor does not deny that an error in the description exists, but this is not an error for which Real Property Tax Law (RPTL §550-556) provides a remedy. This is a matter for the Board of Assessment

Review (BOAR) as are all valuation issues. A grievance under RPTL §524 challenges the value of a property as a whole, not the individual components. The County Director of Real Property Tax Services has no authority to adjudicate valuation. It should be noted that the applicant had no issues with the valuation of his parcel in the past, and never filed a petition with the BOAR.

- 2) Article 5 Title 3 is intended as a means of correcting specific types of errors made by assessors. Where an assessor acts in good faith on misinformation provided by the property owner, no correctible error exists. In this case the assessor mailed a "Property Description Report" (July 13, 2013) which showed the assessor's inventory, including square feet of living area, for the structure at that time. The owner signed and returned the report only indicating a change in mailing address. That signed report did not indicate that any errors in description existed.

For the reasons above, the application for refunds does not meet the statutory requirements. Disputed valuation must be brought before the Board of Assessment Review and cannot be challenged retroactively through the Administrative Corrections of Errors procedures. **I recommend that the request for refunds based on tax rolls dated January 2014 through January 2016 be denied.**



Eric Axelsen, IAO, CCD

Director of Real Property Tax Services



NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE
OFFICE OF REAL PROPERTY TAX SERVICES

RECEIVED
RP-556 (1/06)

2016 FEB -4 AM 9:43

REAL PROPERTY
TAX SERVICES

APPLICATION FOR REFUND AND CREDIT OF REAL PROPERTY TAXES
FOR THE YEAR(S) 20

Part I: To be completed in duplicate by Applicant. For refund or credit of real property tax, submit both copies to County Director of Real Property Tax Services (in Nassau and Tompkins Counties, submit to Chief Assessing Officer), or in a village which has retained its assessing unit status, submit to the village assessor or chairman of village board of trustees. The application must be submitted within three years of the annexation of the warrant for the collection of such tax. For an "unlawful entry" as defined in Sec. 550(7)(a) of the Real Property Tax Law, attach statement signed by assessor or majority of board of assessors substantiating that assessor(s) have obtained proof that parcel should have been granted tax exempt status on tax roll. (See definitions on reverse side).

Mitchell & DARIA SCHRAGE
1a. Name of Owner

Day 212-506-1960 Evening 212-826-0939
2. Telephone Number

125 E 58th St, 45A, NY NY 10022
1b. Mailing Address

205 CARPENTER HILL RD
3. Parcel Location (if different than 1b.)
STANFORDVILLE, NY

Mschrage@KASOWITZ.COM
1c. E-mail Address (optional)

Property Type 241 Rural Space, Res + Ag / 6970.00.030470.0000
4. Description of real property as shown on tax roll or tax bill (include tax map designation)

5. Account No. N/A 6a. Amount of taxes paid or payable * 2006-2015 6b. Date of payment (if paid) *
(as appears on tax bill)

7. I hereby request a refund or credit of real property taxes levied for the year(s) * by NY / Dutchess / STANFORD
for the following reasons (use additional sheets if necessary): * See Schedule Attached Pix Plains School Dist
(tax levying body)

* Insert name of village, county, city, school district; town in Westchester County

2/3/2016
Date

[Signature]
Signature of Applicant

PART II: For use by COUNTY DIRECTOR, VILLAGE ASSESSOR: Attach written report including documentation and recommendation (Include type of error as defined in Sec. 550)

Date application received: 2/4/16 Date warrant annexed: _____

Last day for collection of taxes without interest: Paid

Recommendation: Approve application* Deny Application

3/2/2016
Date

[Signature]
Signature of Official

* If box is checked, this copy is for assessor and board of assessment review of city/town/village of _____ which are to consider attached report and recommendation as equivalent of petitions filed pursuant to section 553.

PART III: For use by TAX LEVYING BODY or OFFICIAL DESIGNATED BY RESOLUTION _____: (Insert Number or Date)

APPLICATION APPROVED (Check reason) Clerical error Unlawful entry Error in essential fact

Amount of taxes paid: \$ _____ Amount of taxes due: \$ _____

Amount of refund or outstanding tax to be credited: \$ _____

APPLICATION DENIED Reason: _____

Date

Signature of Chief Executive Officer or Official Designated by Resolution

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Real Property Tax Law (Refs & Annos)
Chapter 50-a. Of the Consolidated Laws
Article 5. Assessment Procedure
Title 3. Correction of Assessment Rolls and Tax Rolls (Refs & Annos)

McKinney's RPTL § 556

§ 556. Refunds and credits of taxes

Effective: June 22, 2010

Currentness

1. (a) Pursuant to the provisions of this section, an appropriate tax levying body may refund to any person the amount of any tax paid by him or her, or portion thereof, as the case may be, or may provide a credit against an outstanding tax (i) where such tax was attributable to a clerical error or an unlawful entry and application for refund or credit is made within three years from the annexation of the warrant for such tax, or (ii) where such tax was attributable to an error in essential fact, other than an error in essential fact as defined in paragraph (d) of subdivision three of section five hundred fifty of this title, and such application for refund or credit is made within three years from the annexation of the warrant for such tax.

(b) For each year for which a refund or credit is granted pursuant to the provisions of this section by reason of the existence of an unlawful entry as defined by paragraph (b) of subdivision seven of section five hundred fifty of this title, the assessor of the assessing unit in which the subject real property is actually located, but has been omitted from the assessment and tax rolls of such assessing unit, or a school district or special districts located therein, shall have the authority to enter such real property on the current assessment roll in accordance with the provisions of section five hundred fifty-one of this title, notwithstanding any time limitation contained in such section.

2. (a) Whenever it appears to a person who has paid a tax that such tax, or a portion thereof, was attributable to an unlawful entry, a clerical error, or an error in essential fact, as described in subdivision one of this section, such person may file an application in duplicate, including any available proof of the error, with the appropriate county director of real property tax services for a refund of such tax, or portion thereof, as the case may be.

(b) Whenever it appears to a person who is an owner of a parcel which is subject to an outstanding tax, that such tax, or a portion thereof, was attributable to an unlawful entry, a clerical error, or an error in essential fact, as described in subdivision one of this section, such person may file an application in duplicate, including any available proof of the error, with the appropriate county director of real property tax services for a credit of such tax, or portion thereof.

(c) For an error in essential fact, the application for correction shall include a copy of the property record card, field book, or other final work product upon which the incorrect assessment was based and a copy of any existing municipal record which substantiates the occurrence of the error. For an unlawful entry as defined in paragraph (a) of subdivision seven of section five hundred fifty of this title, the application for correction shall include a statement by the assessor or by a majority of a board of assessors substantiating that the assessor or assessors have obtained proof that the parcel which is the subject of the application

should have been granted tax exempt status; the failure to include such statement shall render the application null and void and shall bar the tax levying body from directing a refund or credit of taxes pursuant to this section.

3. The application for a refund or credit pursuant to this section shall be on a form and shall contain such information as prescribed by the commissioner and shall be available in the offices of all collecting officers and in the office of the county director.

4. (a) The county director, within ten days of the receipt of an application filed pursuant to this section, shall investigate the circumstances of the claimed unlawful entry, clerical error or error in essential fact to determine whether the error exists, and on such investigation he may require and shall receive from any officer, employee, department, board, bureau, office or other instrumentality of the appropriate municipal corporation such facilities, assistance and data as will enable him to properly consummate his studies and investigations hereunder.

(b) Upon completion of such investigation the county director shall immediately transmit a written report of such investigation and his or her recommendation for action thereon, together with both copies of the application, to the tax levying body. If the same alleged error also appears on a current assessment roll, the county director shall also file a copy of such report and recommendation with appropriate assessor and board of assessment review who shall consider the same to be the equivalent of a petition for correction filed with such board pursuant to section five hundred fifty-three of this title.

5. The tax levying body, at a regular or special meeting, upon the presentation of an application filed pursuant to this section and the written report described in subdivision four of this section, shall:

(a) examine the application and report to determine whether the claimed unlawful entry, clerical error or error in essential fact exists;

(b) reject an application where it is determined that the claimed unlawful entry, clerical error or error in essential fact does not exist by making a notation on the application and the duplicate copy thereof that the application is rejected and the reasons for the rejection;

(c) approve an application where it is determined that the claimed unlawful entry, clerical error or error in essential fact does exist by making a notation on the application and the duplicate copy thereof that the application is approved and by entering thereon the amount of the refund to be paid or outstanding tax to be credited;

(d) mail an application that has been rejected to the applicant;

(e) mail an application that has been approved to the applicant.

6. (a) The amount of any tax refunded or credited pursuant to this section shall be a charge upon each municipal corporation or special district to the extent of any such municipal corporation or special district taxes that were so refunded. Amounts so charged to cities, towns and special districts shall be included in the next ensuing tax levy.

(b) In raising the amount of a refund or credit pursuant to this section of a relieved school tax the appropriate tax levying body shall charge back against the school district which levied such tax the amount of the refund or credit which shall not exceed the amount paid by the county treasurer to such school district upon the return of such tax. The amount so charged against such school district shall be deducted by the county treasurer and withheld from any moneys which shall become payable by him to such school district by reason of taxes which shall thereafter be returned to him by such school district. No such charge shall be made by the county legislative body against a school district unless ten days' notice thereof by mail has been given to the school authorities thereof. Notice that such deduction will be made shall thereafter be given by the county treasurer in writing to such school authorities on or before the first day of May prior to the making of such deduction.

7. The powers and duties imposed by this section upon the county director of real property tax services shall be performed by such officer for taxes levied for county, city, town, special district and school district purposes except that (a) in the case of counties having the power to assess real property for tax purposes such powers and duties shall be performed by the chief assessing officer or the chairman of the county board of assessors and, (b) in the case of villages, for village tax purposes, such powers and duties shall be performed by the village assessor or the chairman of the village board of assessors; provided, however, that if the village has enacted a local law as provided in subdivision three of section fourteen hundred two of this chapter, the county director shall perform the powers and duties imposed upon such officer by this section on behalf of such village.

8. (a) A tax levying body may, by resolution, delegate to an official who is empowered to authorize payment of bills without prior audit by such body or, in the event there is no official so empowered, to an official responsible for the payment of bills upon audit of the appropriate municipal corporation so designated by it, the authority to perform the duties of such tax levying body, as provided in this section. Such resolution shall only be in effect during the calendar year in which it is adopted and shall designate that such delegation of authority is applicable only where the recommended refund or credit is twenty-five hundred dollars or less, or such other sum not to exceed twenty-five hundred dollars.

(b) Where such resolution is adopted and the recommended refund or credit does not exceed the amount specified in the designating resolution, the county director shall transmit the written report of the investigation and recommendation, together with both copies of the application, to the official designated by the tax levying body. Upon receipt of the written report, the designated official shall follow the procedure which the tax levying body would follow in making refunds, provided, however, where the designated official denies the refund or credit, in whole or in part, such official shall transmit to the tax levying body for its review and disposition pursuant to subdivision five of this section the written report of the investigation and recommendation of the county director, together with both copies of the application and the reasons that the designated official denied the refund or credit. Where the recommendation of the county director is to deny the application or the refund or credit requested is in an amount in excess of the amount authorized in the enabling resolution, the county director shall transmit the written report of the investigation and recommendation, together with both copies of the application, to the tax levying body.

(c) On or before the fifteenth day of each month, the designated official shall submit a report to the tax levying body of the refunds or credits processed by such official during the preceding month. Such report shall indicate the name of each recipient, the location of the property and the amount of the refund or credit.

(d) In no case shall the total sum of such refunds or credits approved by the designated official exceed the amount appropriated therefor by the tax levying body.

9. In the event that an appropriation for a refund authorized pursuant to this section is included in the annual budget next adopted after approval of such refund, interest shall be added to such refund computed from the date that the application is approved pursuant to subdivision five or eight of this section.

10. When a portion of an outstanding tax has been credited pursuant to this section, any interest and penalties that have been imposed thereon shall be reduced to the extent that such interest and penalties were attributable to the credited portion of the tax, and no additional interest and penalties shall be imposed if the corrected amount of the tax is paid within eight days of the date on which the notice of approval is mailed pursuant to paragraph (e) of subdivision five of this section.

Credits

(Added L.1974, c. 177, § 4. Amended L.1975, c. 124, § 8; L.1976, c. 634, § 2; L.1978, c. 390, § 6; L.1980, c. 753, § 4; L.1983, c. 735, § 13; L.1984, c. 383, § 1; L.1986, c. 317, §§ 10, 11; L.1988, c. 160, § 12; L.1993, c. 383, § 1; L.1997, c. 515, § 2, eff. Sept. 3, 1997; L.1999, c. 262, § 1, eff. July 13, 1999; L.2002, c. 616, § 5, eff. Jan. 1, 2003; L.2004, c. 652, § 2, eff. Oct. 26, 2004; L.2010, c. 56, pt. W, § 1, subd. (b), eff. June 22, 2010.)

McKinney's R. P. T. L. § 556, NY RP TAX § 556
Current through L.2016, chapters 1 to 19.