

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
	:	
of	:	
	:	
<b>BEREK NIERENSTEIN</b>	:	DECISION
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Period December 1,	:	
1979 through May 31, 1983.	:	

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Petitioner, Berek Nierenstein, 932 Amsterdam Avenue, New York, New York 10025, filed an exception to the determination of the Administrative Law Judge issued on October 1, 1987 with respect to his petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1979 through May 31, 1983 (File No. 802593). Petitioner appeared by Rhea Flattum. The Division of Taxation appeared by William F. Collins, Esq. (Lawrence Newman, Esq., of Counsel).

Neither of the parties submitted a brief on the exception. Oral argument was held at the petitioner's request on February 16, 1988.

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

***ISSUE***

Whether the petitioner's claim for credit or refund of sales and use taxes paid to the State was barred by the three year statute of limitations prescribed by Tax Law section 1139(a)(i).

***FINDINGS OF FACT***

We find the facts of this matter as stated in the determination of the Administrative Law Judge and such facts are incorporated herein by reference and made a part of this decision.

To summarize, the petitioner was the sole proprietor of a laundromat offering laundry, cleaning and pressing services, as well as retail sales of, inter alia, soaps, laundry bags and plastic bags. On December 14, 1984, the Division of Taxation received from the petitioner an application for refund or credit for sales taxes paid by petitioner for the period December 1, 1979 through May 31, 1983. No part of the refund claim related to petitioner's retail sale of the laundry supplies.

The refund claim was for \$16,667.19 and was based on the fact that petitioner erroneously said tax on total receipts rather than solely taxable receipts. The Division agreed and granted a refund to the extent of \$9,667.31. A refund of the balance of \$6,999.88 was denied on the grounds that a refund of said amount was barred by the three year statute of limitations prescribed by Tax Law section 1139(a)(i). Petitioner requests a waiver of the three year statute of limitations.

***OPINION***

The Administrative Law Judge held that the Division of Taxation was barred from refunding the additional monies claimed by the petitioner by the three year statute of limitations set forth in section 1139(a)(1) [sic].

The record is clear that for the periods of time involved the petitioner erroneously paid sales taxes to the State of New York. It appears from the record that the taxes paid were based

upon a percentage of the petitioner's receipts from the operation of his coin-operated laundromat.

Tax Law section 1139(a) provides, in part, as follows:

"In the manner provided in this section the tax commission shall refund or credit any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application therefore shall be filed with the tax commission (i) in the case of tax paid by the applicant to a person required to collect tax, within three years after the date when the tax was payable by such person to the tax commission as provided in section eleven hundred thirty-seven, or (ii) in the case of a tax, penalty or interest paid by the applicant to the tax commission, within three years after the date when such amount was payable under this article.

The three year period for the quarters ending prior to November 30, 1981 had run by the time petitioner's claim for refund was filed on December 14, 1984. There is no authority for the Division of Taxation to approve the claim in a manner inconsistent with the Tax Law. Statutes of limitations are matters of law, enacted by the State Legislature for the purpose of guiding all persons who are, or may become parties to a legal proceeding, with respect to the timely filing of the various documents necessary to the particular program or proceeding involved.

The statute of limitations here is three years. Its purpose is to allow a reasonable time for taxpayers who have erroneously filed or paid taxes to realize their error and make application for refund. The State is thus put on notice that there is this three year period during which it may be liable for such claims. At the end of the period, the matter is settled. Anything less than this degree of certainty would make the financial operation of government difficult, if not impossible. In short, the statute of limitations at issue here is a balance between the needs of

the State with regard to the protection of its financial resources and the rights of taxpayers to correct their errors.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the petitioner, Berek Nierenstein, is in all respects denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Berek Nierenstein is denied and the Division of Taxation's denial of a portion of petitioner's claim for a refund is sustained.

DATED: Albany, New York  
April 21, 1988

/s/ John P. Dugan  
President

/s/ Francis R. Koenig  
Commissioner