

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
HAL AND HELEN MILES : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1970. :

Petitioners Hal and Helen Miles, 192 Yorktowne Court, Washington Township, New Jersey 07675, filed an exception to the determination of the Administrative Law Judge issued on November 30, 1989 with respect to their petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970 (File No. 803221). Petitioners appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Irwin Levy, Esq., of counsel).

Petitioners filed a brief on exception. The Division did not file a brief. Oral argument was not requested.

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

ISSUE

Whether petitioners' claim for a refund on their 1971 return was a timely claim for a credit of an overpayment made in 1970.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for findings "4" and "5". We have made an additional finding of fact. The Administrative Law Judge's findings, the modified findings and the additional finding of fact are set forth below.

Petitioners have filed income tax returns for every year since their marriage in 1959. In 1968 they had an overpayment which they applied to their 1969 estimated taxes. Similarly, in 1969 they had an overpayment which they applied to their 1970 estimated tax.

For 1970, the Division of Taxation alleges that it received no tax return from petitioners. Mr. and Mrs. Miles remember signing the 1970 return. Mr. Miles mailed it at a post office box on the ground floor of his office building at 6090 Broadway, New York City. The Division of Taxation has submitted no evidence of its alleged nonreceipt of the 1970 return. Petitioners' copy of the return for 1970 shows a taxable income of \$9,574.43, a tax, after credit, of \$395.21 and an unincorporated business tax due of \$129.80 for a total tax liability of \$525.01. It further shows tax withheld of \$1,181.64 from both petitioners and estimated tax of \$1,578.53 paid by Mr. Miles. An overpayment was shown of \$2,235.16. Petitioners directed that this amount be credited toward 1971 estimated tax.

We modify finding of fact "4" to read as follows:

The timely filed 1971 tax return showed a tax liability, after credit, of \$51.22 and \$297.22 and taxes withheld of \$406.69 and \$727.39 for Mr. and Mrs. Miles, respectively, and the estimated tax payment of \$2,235.16 attributed solely to Mr. Miles. Overpayments were calculated of \$2,590.63 and \$490.17. Petitioners requested refunds of these overpayments on their 1971 return.

The Division of Taxation issued a Statement of Refund Adjustment to petitioners on April 12, 1985. For 1971, the Division allowed refunds in the amounts of \$355.47 for Mr. Miles and \$490.17 for Mrs. Miles. The claimed estimated tax payment was not allowed. The statement stated as follows, "[t]he law does not permit us to allow the credit you calimed [sic] in your income tax return for 1970. There is a deadline for filing for a refund or credit and that date, 4/15/74 had expired before you filed."¹

¹The Administrative Law Judge's finding of fact "4" had read as follow

"(a) The 1971 tax return showed a tax liability, after credit, of \$51.22 and \$297.22 and taxes withheld of \$406.69 and \$727.39 for Mr. and Mrs. Miles, respectively, and the estimated tax payments of \$2,235.16 attributed solely to Mr. Miles. Overpayments were calculated of \$2,590.63 and \$490.17. Petitioners requested refunds of

We modify finding of fact "5" of the Administrative Law Judge to read as follows:

In January 1974, assessments were made against petitioners for penalties with respect to their 1970 and 1971 taxes. Copies of these assessments are not in evidence. The Statement of Refund Adjustment indicates that these assessments were withdrawn by the Division after it received a copy of petitioners' 1970 return in 1984.²

We find as an additional fact that the Division of Taxation did not introduce into evidence a pleading in response to the petition.

OPINION

In the determination below the Administrative Law Judge held that the petitioners' testimony alone was insufficient to prove timely filing of their 1970 return.

On exception, petitioners contend that they have presented evidence of mailing which entitles them to a presumption that their return was mailed and delivered in a timely manner. Further, petitioners argue that the Division has failed to rebut the presumption of mailing and delivery to which they are entitled. As a result, petitioners claim that their 1970 return was mailed and delivered in a timely fashion so that they qualify for the tax credit.

The Division did not respond to petitioners' exception.

these overpayments.

"(b) The Division of Taxation issued a Statement of Refund Adjustment to petitioners on January 27, 1986. For 1971, the Division allowed refunds in the amounts of \$355.47 for Mr. Miles and \$490.17 for Mrs. Miles. The claimed estimated tax payment was not allowed. The statement stated as follows, '[t]he law does not permit us to allow the credit you claimed in your income tax return for 1970. There is a deadline for filing for a refund or credit and that date, April 15, 1974 had expired before you filed.'"

We modified this fact to indicate that the 1971 return was timely filed and that the Statement of Refund Adjustment was issued on April 12, 1985, not January 27, 1986 as stated by the Administrative Law Judge.

² Finding of fact "5" of the Administrative Law Judge read as follows:

"In January 1974, assessments were made against petitioners for penalties with respect to their 1970 and 1971 taxes. The details of these assessments are not in evidence. These assessments were apparently satisfied in April 1983 and April 1984 by the application of refunds the petitioners claimed on their 1982 and 1983 returns."

We modified this fact to indicate that the Division withdrew the assessments. (Exhibit 6.)

We reverse the determination of the Administrative Law Judge.

First, we do not agree with the Administrative Law Judge that the single determinative issue is whether the 1970 return was timely filed. On their 1970 return, petitioners directed that their overpayment of \$2,235.16 be credited towards their 1971 estimated tax payments. On their 1971 return, they requested a refund of their overpayment. It was the 1971 claim for a refund that was disallowed in part by the Division with the explanation "the law does not permit us to allow the credit you claimed (sic) in your income tax return for 1970. There is a deadline for filing for a refund or credit and that date, 4/15/74 had expired before you filed. Therefore, Estimated Tax Payments claimed on your 1971 return have been disallowed" (Exhibit 6).

The issue that has not been addressed by the Division or the Administrative Law Judge, despite petitioners' consistent attempts to raise it,³ is whether the 1971 return could function as a claim for a refund of the overpayment that originally occurred in 1970. Our own review of Federal and State case law revealed no court decision directly on point but it disclosed that the Internal Revenue Service has established a policy that:

"a timely-filed income tax return claiming credit for overpayment of tax for the immediately preceding year constitutes an informal claim for credit. The claim may be considered both timely and proper if it is later perfected by the filing of a formally correct claim, even if the formal claim is filed after the period of limitation has expired" (General Counsel Memorandum 34512, Internal Revenue Service, June 1, 1971)

This memorandum relies, as we did in the Matter of Laurence B. Rand as Guardian of Hope Sayles (Tax Appeals Tribunal, May 10, 1990), on the analysis developed in United States v. Kales, 314 US 186, 41-2 USTC ¶ 9785. In Kales, the Supreme Court stated:

"[a] notice fairly advising the Commissioner of the nature of the taxpayer's claim, which the Commissioner could reject because too

³In their petition, petitioners stated that "the timely filing of our 1971 tax return in which we requested a refund, was in compliance with the law." Since the Division did not offer a responding pleading as an exhibit we cannot know if it addressed this issue. At the hearing, however, the record is devoid of any meaningful response to petitioners' repeated assertion that the question was a 1971 refund claim, not 1970. The Division's representative characterized petitioners' efforts to deal with the 1971 refund claim as "stirring up a storm" over something that was not in issue (tr., p. 42). We find the Division's and the Administrative Law Judge's refusal to even address this issue appalling, given petitioners' tenacious efforts to have it addressed.

general or because it does not comply with formal requirements of the statute and regulations, will nevertheless be treated as a claim where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period" (United States v. Kales, *supra*, 41-2 USTC ¶ 9785, at 1,041).

Analyzing the 1971 return of petitioners under the Kales standard, we agree with the policy of the Internal Revenue Service that the return is sufficient as an informal claim for a credit or refund of the 1970 overpayment. The timely filed 1971 return put the Division on notice that petitioners were claiming a refund in 1971 based in part on an overpayment of estimated taxes. Although it is not possible to ascertain from the record before us when and how the Division first questioned the source of the estimated tax payments, it is clear that the 1971 return placed the issue before the Division. Since the 1971 return was timely filed, it was a timely filed informal claim for credit of the 1970 overpayment under § 687(a) of the Tax Law.

Having decided that petitioners filed a timely informal claim for a credit of the 1970 estimated taxes, we must now decide whether petitioners have perfected their informal claim and proved their entitlement to the credit claimed. To do so, petitioners have to prove that they made an overpayment in 1970 of a total of \$2,235.16. On this point, the record indicates that in August of 1984 petitioners submitted a copy of their 1970 return and this submission led the Division to withdraw the four assessments that had been issued for the years 1970 and 1971. Further, the Division offered the copy of the 1970 return at the hearing without stating any objection to the correctness of the information on the return, only noting that it was received in 1984 (tr., pp. 7-8). From this information, we conclude that the Division has accepted the accuracy of the information on the 1970 return, and we find that petitioners have proved that they overpaid their tax by \$2,235.16 in 1970. This result is in accord with the Internal Revenue Service Counsel Memorandum discussed above where it was concluded that the late filed return constituted the formal claim for credit of the overpayment, perfecting the timely filed informal claim, and the credit could be allowed.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioners, Hal and Helen Miles, is granted;
2. The determination of the Administrative Law Judge is reversed;
3. The petition of Hal and Helen Miles is granted; and
4. The Division of Taxation is directed to grant petitioners' refund in the amount of \$2,235.16 together with the applicable interest.

DATED: Troy, New York
September 13, 1990

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner