

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
LOUIS K. AND SYLVIA R. MANNING	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Income Taxes under Article 22 of the Tax Law	:	
and Chapter 46, Title T of the Administrative	:	
Code of the City of New York for the Year 1981.	:	

Petitioners, Louis K. and Sylvia R. Manning, 226-11 Hillside Avenue, Queens Village, New York 11427, filed an exception to the determination of the Administrative Law Judge issued on June 29, 1989 with respect to their petition for redetermination of a deficiency or for refund of New York State and New York City income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1981 (File No. 803802). Petitioners appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Angelo A. Scopellito, Esq., of counsel).

Petitioners filed a brief on exception. The Division submitted a letter in lieu of a brief. Oral argument was not requested.

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

ISSUES

I. Whether the Administrative Law Judge erred in finding that the Division of Taxation does not bear a responsibility to detect and inform petitioners of an error made on certain tax returns so that a claim pursuant to Tax Law § 687 could have been timely filed by petitioners.

II. Whether the limitation periods set forth in Tax Law §§ 683 and 687 were properly applied in this matter.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge and such facts are stated below.

Petitioners, Louis K. and Sylvia R. Manning, filed New York State and City of New York resident income tax returns for 1981. The returns were filed on a Form IT-201 with the filing status "Married filing separately on one return".

On June 8, 1984, the Division of Taxation issued a Statement of Audit Changes to petitioner Louis K. Manning, increasing said petitioner's reported income for 1981 by \$7,290.00. The basis for the increase was that a Federal-State computer tape match showed that Mr. Manning had reported \$21,732.00 in adjusted gross income to the Internal Revenue Service, as compared with \$14,442.00 reported on his State and City return. The Statement of Audit Changes asserted \$752.48 in additional New York State tax and \$230.69 in additional New York City tax, plus interest.

On January 15, 1985, petitioner Louis K. Manning wrote to the Division of Taxation explaining that \$5,299.55 of the difference between the Federal and New York income was interest on United States Treasury bills. The balance of \$1,990.00, according to Mr. Manning, consisted of Federal adjustments which petitioners had inadvertently failed to take on their 1980 New York returns.

On April 5, 1985, the Division of Taxation issued a Notice of Deficiency to petitioners, Louis K. and Sylvia R. Manning, for a total of \$983.17 in additional New York State and City of New York taxes, plus interest, for the year 1981.

On April 8, 1985, the Division of Taxation reduced the additional income from \$7,290.00 to \$1,990.00, based on Mr. Manning's explanation that \$5,299.55 was attributable to United States Treasury bill interest. The total of New York State and New York City taxes due was reduced to \$236.11, plus interest.

The \$1,990.00 of increased income remaining at issue consists of \$1,500.00 for payments to an Individual Retirement Account and \$490.00 for an interest penalty on early withdrawal of savings, both of which petitioners took as adjustments to income on their Federal return for 1980, but failed to take as adjustments on their New York returns for that year.

In 1980, petitioner Louis K. Manning's bank had erroneously notified the Internal Revenue Service of a \$5,000.00 distribution to Mr. Manning from his Individual Retirement Account. There had been, in fact, no such distribution. The Internal Revenue Service notified New York State of the supposedly unreported distribution. Mr. Manning eventually satisfied the Internal Revenue Service that no distribution had taken place and subsequently satisfied New York State of that same fact.

Petitioners' position is essentially that it was improper for the Division of Taxation to delay issuance of the Statement of Audit Changes for 1981 until it was too late for petitioners to file amended returns for 1980. Petitioners point out that the Division of Taxation had examined the 1980 returns and failed to advise them of the discrepancy in their favor for that year.¹

OPINION

In the determination below, the Administrative Law Judge held that petitioners were not entitled to claim certain 1980 Federal adjustments to income on their State and City returns for 1981. While noting that it was unfortunate that by the time the Statement of Audit Changes was issued on June 8, 1984 it was too late for petitioners to amend their 1980 returns, the Administrative Law Judge nonetheless ruled that the Division of Taxation (hereinafter the Division) could not be held responsible for petitioners' failure to claim the adjustments in 1980. The Administrative Law Judge further observed that the Division could not be held

¹Petitioners seem to believe that the audit action for 1981 was triggered by the question with respect to the 1980 return which had been precipitated by the bank error. However, the 1981 discrepancy was determined by the Federal/State computer tape match program which continuously compares information reported to the Internal Revenue Service with that reported to the Division of Taxation.

accountable for failing to detect and then inform petitioners of the discrepancy upon its review of petitioners' 1980 returns regarding Federal changes triggered by a bank error.

On exception, petitioners take issue with the determination that the the Division cannot be held responsible for its failure to detect and then advise petitioners of the existence of the error on their 1980 returns. Petitioners assert that the State bears that responsibility based upon an "inalienable obligation to protect and defend its constituency". Petitioners further argue that where the period of time taken by the Division to conduct the audit exceeds the statute of limitations for filing corrective amendments, either the limitation period for the audit should be curtailed or the period for filing amendments should be extended to allow for timely correction. Lastly, petitioners assert that the 1980 adjustments which they claimed on their 1981 returns were not made with an intent to defraud or willfully deprive the State of taxable income.

In response, the Division submits that petitioners have failed to raise any substantive issues to dispute the determination of the Administrative Law Judge in this matter.

We affirm the determination of the Administrative Law Judge.

Pursuant to Tax Law § 687(a), a claim by a taxpayer for a credit or refund must be filed within three years after the filing of the original return or within two years after the tax was paid, whichever period expires later. Further, Tax Law § 687(e) provides in relevant part that no credit or refund shall be allowed or made unless a claim is filed by the taxpayer within the statutory time period set forth in Tax Law § 687(a).

It is unchallenged here that petitioners failed to file a claim for a credit or refund by filing an amended return within the statutory time frame of Tax Law § 687 to rectify their failure to take the federal adjustments on their 1980 New York returns. To excuse that failure, petitioners contend that the Division had a duty to detect and inform them of their error on their 1980 returns so that petitioners could have timely claimed the adjustments within the statutory time period. We do not agree.

Tax Law § 687 clearly places the onus on the taxpayer to file the claim for a credit or refund. To shift that burden to the Division as petitioners suggest would result not only in the imposition of an onerous and unmanageable administrative responsibility on the Division, but would be clearly unreasonable given that the taxpayer, who is in possession of all the relevant documents and information, is in the best position to ascertain whether a mistake or omission has been made on a previously filed return. Moreover, to require the Division to inform the taxpayer of any discrepancies, errors or omissions made by the taxpayer on the return would prove unnecessary in the situation where the taxpayer discovers the existence of the error after the return has been filed. That situation is presented here. The record before us establishes that at the hearing below, petitioner Louis Manning testified that while preparing the 1981 State and City returns, he realized that he had inadvertently failed to claim the federal adjustments on the 1980 returns. To rectify that oversight, Manning further explained that he decided to take the adjustments on his 1981 returns instead. By Manning's own admission then, it is evident that by 1981 he was in fact aware of and had recognized the existence of the error he had made on the returns for the prior year at a time well within the statutory time period to timely file an amended return. Accordingly, we reject petitioners' attempt to shift to the Division the responsibility for petitioners' own failure to take corrective action once the error had been discovered within the time period imposed by Tax Law § 687 .

We next turn to the statute of limitations argument raised by petitioners. With certain exceptions inapplicable here, Tax Law § 683(a) provides that personal income tax shall be assessed within three years after the return was filed.² Petitioners' contention that the Division is not entitled to the three-year limitation period with regard to the audit of their 1981 returns is clearly contrary to the statutory mandate of Tax Law § 683 and must be rejected. Alternatively, petitioners argue that if the time period for the 1981 audit is not curtailed, then petitioners should be entitled to additional time to file an amended return. This contention

²Notably, petitioners do not challenge the timeliness of the issuance of the Notice of Deficiency. The record establishes that the Notice of Deficiency was timely issued on April 5, 1985, within three years of April 15, 1982, the date petitioners' 1981 returns are deemed filed pursuant to Tax Law § 683.

also lacks merit. While we recognize that Tax Law § 687 permits a taxpayer in certain circumstances to obtain an extension on the time period within which to file a claim for a refund or credit (see, Tax Law §§ 687[b] and 683[c][2]), it is clear that no such written agreement between petitioners and the Division was entered into here. Petitioners simply failed to file an amended return within the statutory limitations period imposed pursuant to Tax Law § 687, and any request for an extension at this late date must be rejected.

As a final point, petitioners argue that their claim of 1980 adjustments on their 1981 tax returns was not made with willful or fraudulent intent. We need not address this claim as petitioners have not been assessed a penalty based upon such conduct.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioners Louis K. and Sylvia R. Manning is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Louis K. and Sylvia R. Manning is denied; and
4. The Notice of Deficiency issued April 5, 1985, as modified by the partial cancellation made on April 8, 1985, is sustained.

DATED: Troy, New York
April 5, 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