

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>HARRISON S. BOYCE</b>	:	DECISION
	:	DTA No. 808082
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1985 and 1986.	:	

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Petitioner Harrison S. Boyce, P.O. Box 332, Oswego, New York 13126, filed an exception to the determination of the Administrative Law Judge issued on April 11, 1996. Petitioner appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

Neither party filed a brief on exception. Oral argument was not requested.

The Tax Appeals Tribunal renders the following decision per curiam.

**ISSUE**

Whether the Division of Taxation properly denied petitioner's claim for refund of personal income tax paid on Federal pension income on the basis that said claim fell outside the period of limitations for claiming a credit or refund in Tax Law § 687(a).

***FINDINGS OF FACT***

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

Petitioner, Harrison S. Boyce, filed his 1985 New York State personal income tax return on or before April 15, 1986. Petitioner also timely filed his 1986 New York State personal income tax return. On both returns petitioner reported and paid tax on Federal pension income.

Petitioner subsequently filed a claim for refund for the years 1985 and 1986 seeking refund of income tax paid on his Federal pension income for those years. While the record is

not clear as to the date on which said refund claim was filed, it is undisputed that the claim was filed subsequent to April 15, 1989, or beyond the three-year limitations period for the filing of a refund claim for 1985 (see, Tax Law § 687[a]).

Pursuant to a letter dated March 29, 1990, the Division of Taxation ("Division") denied petitioner's refund claim for 1985 and 1986.

Subsequent to the filing of the petition herein, i.e., on or about September 23, 1994, the Division granted petitioner's refund claim for 1986.

### ***OPINION***

The issue before us stems from the United States Supreme Court's ruling in Davis v. Michigan Dept. of Treasury (489 US 803, 103 L Ed 2d 891) wherein the Court invalidated a Michigan taxing scheme that exempted from state personal income taxation retirement benefits paid by the state while taxing those paid by the Federal government. The Court held this taxing scheme was violative of 4 USC § 111 and the doctrine of intergovernmental tax immunity. During this time, New York employed a similar taxing scheme (see, Tax Law former § 612[c][3]). Following Davis, the Tax Law was amended to provide the same exemption for Federal pensions as was provided for state pensions (Tax Law § 612[c][3], as amended L 1989, ch 664, § 1). The issue of retroactive application of the Davis case was addressed in Harper v. Virginia Dept. of Taxation (509 US 86, 125 L Ed 2d 74) wherein the Court held that Davis was to be applied retroactively. However, a refund was not awarded because Federal law did not necessarily entitle them to such (Harper v. Virginia Dept. of Taxation, supra, 125 L Ed 2d at 88). "Rather, the Constitution requires [the taxing state] 'to provide relief consistent with federal due process principles'" (Harper v. Virginia Dept. of Taxation, supra, quoting American Trucking Assns. v. Smith, 496 US 167, 110 L Ed 2d 148, 161). The matter was then remanded back to the Virginia Supreme Court to determine whether, under Virginia law, the taxpayers therein are afforded a remedy which satisfies the minimum requirements of Federal due process (Harper v. Virginia Dept. of Taxation, supra, 125 L Ed 2d at 89).

In the determination below, the Administrative Law Judge, reviewing the case cited above and relying on McKesson Corp. v. Division of Alcoholic Beverages & Tobacco (496 US 18, 110 L Ed 2d 17), held that New York's three-year statute of limitations for claiming a refund of personal income tax "falls well within the range of permissible procedural protections discussed in McKesson" (Determination, conclusion of law "H"). Accordingly, because petitioner had not filed a refund claim for 1985 within the parameters of Tax Law § 687(a), the Administrative Law Judge held that the Division properly denied petitioner's claim for refund (see also, Matter of Hicks, Tax Appeals Tribunal, March 20, 1997; Matter of Lonergan, Tax Appeals Tribunal, February 13, 1997; Matter of Mostachetti, Tax Appeals Tribunal, February 13, 1997; Matter of Jones, Tax Appeals Tribunal, January 9, 1997).

On exception, petitioner argues that, notwithstanding the statute of limitations, because New York erroneously taxed his pension, a refund should be forthcoming. However, after reviewing the record before us and carefully scrutinizing the Administrative Law Judge's determination, we see no reason to alter his analysis or ultimate conclusion.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Harrison S. Boyce is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Harrison S. Boyce is denied; and

4. The Division of Taxation's denial of petitioner's claim for refund is sustained.

DATED: Troy, New York  
April 24, 1997

/s/Donald C. DeWitt  
Donald C. DeWitt  
President

/s/Carroll R. Jenkins  
Carroll R. Jenkins  
Commissioner

/s/Joseph W. Pinto, Jr.  
Joseph W. Pinto, Jr.  
Commissioner