STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
LEONARD W. and JANICE M. BRAULT	:	DECISION DTA NO. 814088
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1986 through 1988.	:	

Petitioners Leonard W. and Janice M. Brault, 9057 Main Street, Box 174, Westernville, New York 13486, filed an exception to the determination of the Administrative Law Judge issued on January 29, 1998. Petitioners appeared *pro se*. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a brief in opposition and petitioners filed a reply brief. Oral argument was not requested.

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

ISSUE

Whether the Division of Taxation properly denied petitioners' claims for refund of taxes paid on Federal pension income as untimely pursuant to the three-year statute of limitations period of Tax Law § 687(a).

FINDINGS OF FACT

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

Petitioners, Leonard W. and Janice M. Brault, timely filed joint New York State personal income tax returns for each of the years at issue. Specifically, petitioners filed their 1986 return on or before April 15, 1987; their 1987 return on or before April 15, 1988; and their 1988 return on or before April 15, 1989. On each return petitioners reported and paid tax on Federal pension income paid to Leonard W. Brault.

On July 6, 1994, petitioners filed claims for refund of tax paid on Mr. Brault's Federal pension income for each of the years at issue. Petitioners did not file any refund claims for the years at issue before July 6, 1994.

By letter dated August 29, 1994, the Division of Taxation ("Division") denied petitioners' refund claims as untimely filed.

On April 15, 1989, petitioners filed a "protective" claim for refund of personal income tax on Form IT-113X for the year 1985 seeking a refund of tax paid on Mr. Brault's Federal pension income for that year. The form states the following reason for the refund claim: "According to a recent U.S. Supreme Court ruling, this [Federal pension] income should not have been included in total income."

On November 6, 1989, the Division issued a Technical Services Bureau memorandum to the public entitled *Taxation of Federal Pensions* (TSB-M-89-[9]I) which advised that Tax Law § 612(c)(3) had been amended in response to the Supreme Court's decision in ***Davis v. Michigan Dept. of Treasury*** (489 US 803, 103 L Ed 2d 891) to exempt Federal pensions from state income taxation. The memorandum further advised that the amendment was effective with respect to pension payments received on or after January 1, 1989 and that the State would not issue refunds for prior years even where the statute of limitations had not yet expired. The memorandum also

advised of pending court cases which "may result in the state being required to issue refunds" for years prior to 1989 and that, pending the outcome of such litigation, "taxpayers have the right to file protective claims for all open years."

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge, relying on our decisions in ***Matter of Purvin*** (Tax Appeals Tribunal, October 9, 1997), ***Matter of Nuzzi*** (Tax Appeals Tribunal, October 2, 1997), ***Matter of Hotaling*** (Tax Appeals Tribunal, June 19, 1997), ***Matter of Burkhardt*** (Tax Appeals Tribunal, January 9, 1997) and ***Matter of Jones*** (Tax Appeals Tribunal, January 9, 1997), held that petitioners' claims for refund of personal income tax paid on Federal pension income were not filed within the three-year statute of limitations set forth in Tax Law § 687(a) and, therefore, sustained the Division's denial of those refunds.

The Administrative Law Judge stated that under the rule of ***Harper v. Virginia Dept. of Taxation*** (509 US 86, 125 L Ed 2d 74, citing ***McKesson Corp. v. Division of Alcoholic Beverages & Tobacco***, 496 US 18, 110 L Ed 2d 17), the backward-looking relief afforded by the three-year statute of limitations of Tax Law § 687(a) is sufficiently meaningful to rectify any unconstitutional deprivation.

The Administrative Law Judge next determined that petitioner's argument, that they and many other Federal retirees were not given adequate notice of the need to file refund claims, must be rejected pursuant to ***Matter of Jones*** (***supra***) wherein the Tribunal refused to impose on the Division the burden of notifying every taxpayer of their right to a refund. In addition, the Administrative Law Judge noted that the Technical Services Bureau memorandum issued on November 6, 1989 placed petitioners on notice of their need to file protective refund claims.

Further, the Administrative Law Judge stated that since petitioners were aware that they had to file a timely claim for refund for the year 1985 (and did so), they should have also known of the need to file refund claims for 1986 through 1988.

The Administrative Law Judge, relying on ***Matter of Fiduciary Trust Co. v. State Tax Commn***. (120 AD2d 848, 502 NYS2d 119), rejected petitioners' argument that Tax Law § 687(a) is not applicable to a situation where taxes are paid under a law later found to be unconstitutional. The Administrative Law Judge stated that such taxes are an overpayment and subject to the three-year limitation period of Tax Law § 687(a). In addition, the Administrative Law Judge held that ***McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*** (***supra***) provides that states may choose a relatively short statute of limitations in order to maintain their fiscal stability.

Finally, the Administrative Law Judge, after reviewing the Taxpayer's Bill of Rights, found that those provisions were not violated by the statute of limitations contained in Tax Law § 687(a).

ARGUMENTS ON EXCEPTION

On exception, petitioners argue that the Administrative Law Judge improperly restated the issue as whether the Division properly denied petitioners' claims for refund of taxes paid on Federal pension income as untimely pursuant to the three-year statute of limitations period of Tax Law § 687(a). Petitioners assert that the issue is whether the Division provided them due process as required by the 14th Amendment. Petitioners allege that due process is satisfied only if they receive proper notification of possible retroactive application of tax laws and the possible need to file protective claims within the three-year period (Petitioners' brief in support, p. 1).

Petitioners also repeat their arguments below that the Division was obligated to inform Federal pensioners of their right to obtain refunds. Petitioners contend that the manner in which the public was made aware of their possible rights to refunds, i.e., secondary media newspapers, TSB-Ms, hiring of accountants or lawyers or membership in a retirement organization, did not provide due process as required by the 14th Amendment. Petitioners further assert that the Division should have included TSB-M-89(9)I in its instructions booklets to taxpayers.

Finally, petitioners argue that, by filing a valid claim for the tax year 1985, the Division was put on notice that petitioner Leonard Brault was a Federal retiree seeking refunds and that this satisfied any requirements to file claims for the years 1986 through 1988.

In response, the Division asserts that petitioners' argument that they filed an informal refund claim for the years 1986 through 1988 when they filed their refund claim for 1985 is without merit. The Division states that it is specifically stated on the claim form that a separate claim must be filed for each tax year.

The Division also argues that the Administrative Law Judge correctly found that petitioners were provided a clear and certain postdeprivation remedy under Tax Law § 687.

OPINION

We begin by addressing petitioners' argument that the Administrative Law Judge failed to address the proper issue. Petitioners allege that the issue is whether they were provided due process. We conclude that they were and further find petititioners' argument to be without merit..

In ***Harper v. Virginia Dept. of Taxation*** (***supra***), the Court held that the rule announced in ***Davis v. Michigan Dept. of Treasury*** (***supra*** [statute exempting from income tax retirement

benefits paid by state but not by Federal government, held invalid]) was to be given retroactive effect, but it did not provide relief to the petitioner therein. Rather, citing ***McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*** (***supra***), the Court held that each state was free to choose the form of remedy it would provide to rectify any unconstitutional deprivation, but such remedy must satisfy the demands of Federal due process. The Court went on to state that Federal due process requires that where taxes are paid and later found to be unconstitutional, the state must provide taxpayers with meaningful backward-looking relief to rectify any unconstitutional deprivation (***Harper v. Virginia Dept. of Taxation***, ***supra***, 125 L Ed 2d, at 89, ***citing McKesson Corp. v. Division of Alcoholic Beverages & Tobacco***, ***supra***).

In several prior decisions, we have carefully reviewed and analyzed the above-cited cases and found that the refund provisions of Tax Law § 687(a) provide meaningful backward-looking relief consistent with ***Harper,*** avoiding any unconstitutional deprivation and satisfying the Due Process Clause of the 14th Amendment (***see, e.g.***, ***Matter of Purvin***, ***supra***; ***Matter of Jones***, ***supra***). The relief also has been approved by the courts of New York and the United States Supreme Court (***see***, ***Duffy v. Wetzler***, 207 AD2d 375, 616 NYS2d 48, ***lv denied*** 84 NY2d 838, 617 NYS2d 129, ***cert denied*** 513 US 1103, 130 L Ed 2d 673). Accordingly, the issue before us for review, as properly stated by the Administrative Law Judge, is whether petitioners timely filed their claims for refund for the years 1986 through 1988. We conclude that they failed to do so.

With respect to the other arguments petitioners have raised on exception, we find that the Administrative Law Judge correctly and adequately addressed these arguments and affirm the determination of the Administrative Law Judge for the reasons set forth therein

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Leonard W. and Janice M. Brault is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Leonard W. and Janice M. Brault is denied; and

4. The Division of Taxation's denial of petitioners' claim for refund, dated August 29, 1994, is sustained.

DATED: Troy, New York
September 3, 1998

/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