

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
REUBEN AND RUTH SPIEGEL	:	DECISION
	:	DTA No. 814498
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1986.	:	

Petitioners Reuben and Ruth Spiegel, 406 Belfast Lane, Ridge, New York 11961-2045, filed an exception to the determination of the Administrative Law Judge issued on May 22, 1997. Petitioners appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

Neither party submitted a brief. Oral argument was not requested.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision. Commissioner Pinto took no part in the consideration of this decision.

ISSUE

Whether petitioners are entitled to a refund of personal income tax paid on Federal pension income when their refund claim was not filed within three years of filing their tax return for the year 1986.

FINDINGS OF FACT

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

In 1986, petitioner Reuben Spiegel received income from a Federal pension in the amount of \$25,032.00. Petitioners timely filed a New York State income tax return for 1986 on which they subtracted a pension exclusion of \$20,000.00 from Mr. Spiegel's Federal pension in calculating New York income subject to tax.

It was not until August 24, 1994 that petitioners filed a refund claim for 1986 although they had filed refund claims for 1987 and 1988 more than four years earlier, on June 15, 1990. Petitioners did not respond to the evidence introduced into the record by the Division of Taxation ("Division"), and it is unknown why petitioners failed to file a refund claim for 1986 when they filed refund claims for 1987 and 1988.

The Division issued a Notice of Disallowance in October 1994 in response to petitioners' claim for refund for 1986 on the basis that their claim was not timely filed pursuant to Tax Law § 687 because it was not filed by April 15, 1990, three years from the date the 1986 return was filed. In addition, the Division noted that in 1986:

"New York State provided a \$20,000.00 pension and annuity income exclusion for those taxpayers who received their pension [in periodic payments] and were 59-1/2 years or age or older. Thus, if the exclusion equalled or exceeded your pension income, no tax would have been paid on your pension and no refund would be due."

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge concluded that a Federal retiree who failed to file a timely claim for refund within the three-year statute of limitations for refund claims under Tax Law § 687 was not entitled to a refund of income tax paid on Federal pension income. Furthermore, in citing to ***Matter of Jones*** (Tax Appeals Tribunal, January 9, 1997), the Administrative Law Judge noted that this Tribunal has held that New York's income tax refund procedure was a "constitutionally sound scheme which 'rectified any unconstitutional deprivation' (***Harper v. Virginia Dept. of Taxation***, 509 US 86, 125 L Ed 2d 74) while simultaneously respecting the State's fisc (***McKesson Corp. v. Division of Alcoholic Beverages & Tobacco***, 496 US 18, 110 L Ed 2d 17)." Therefore, the Administrative Law Judge sustained the Division's denial of petitioners' claim for refund since it was not filed within three years of the date on which petitioners' 1986 tax return was filed with the State. Lastly, the Administrative Law Judge noted that even if petitioners filed their claim for refund for 1986 at the same time they filed their claims for refund for 1987 and 1988, such claim would still have fallen outside the three-year statute of limitations and, thus, would have been untimely.

ARGUMENTS ON EXCEPTION

Petitioners state in their exception that they were told by a Division employee that there was legislation pending that would allow their refund to be processed and, when such legislation actually became a law, the Division would send petitioners whatever papers were necessary in order to file their claim. Petitioners state that although they waited, nothing was forthcoming from the Division and the time period within which to file their claim elapsed.

Moreover, petitioners claim that a Division employee told them during a telephone conversation that although the Division had a notation that stated that it received a claim for refund from petitioners, petitioners allege that the Division employee told them that such claim was missing; either lost or misplaced. Petitioners, thus, disagree that their claim for refund was untimely filed.

Opinion

In their exception, petitioners present the same arguments which were presented to the Administrative Law Judge below. After reviewing the entire record, we find that the Administrative Law Judge adequately and correctly dealt with the issue presented to him. Therefore, we affirm his determination for the reasons set forth therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Reuben and Ruth Spiegel is denied;
2. The determination of the Administrative Law Judge is sustained;

3. The petition of Reuben and Ruth Spiegel is denied; and
4. The Notice of Disallowance is sustained.

DATED: Troy, New York
January 29, 1998

Donald C. DeWitt
President

Carroll R. Jenkins
Commissioner