

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition :
of :
WILBUR I. AND ELENORA M. COONS : DECISION
for Redetermination of a Deficiency or for : DTA No. 814720
Refund of New York State Personal Income Tax :
under Article 22 of the Tax Law for the Years :
1987 and 1988. :

Petitioners Wilbur I. and Elenora M. Coons, 506 Charles Street, Scotia, New York 12302, filed an exception to the determination of the Administrative Law Judge issued on October 3, 1996. 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.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUE

Whether petitioners' claim for refund for taxes paid on Federal pension income is barred by the three-year 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.

The Division's motion for summary determination is supported by the affidavit of Herbert M. Friedman, Jr., sworn to the 17th day of June 1996 and the affidavit of Charles Bellamy, sworn to the 17th day of June 1996.

Mr. Friedman in his affidavit asserts that since petitioners did not file refund claims or amended returns for their personal income taxes for the years 1987 and 1988 within three years from the time the returns were filed or two years from the time the taxes were paid, whichever is

later, pursuant to Tax Law § 687, petitioners' refund claims should be barred as untimely, the petition before the Division of Tax Appeals should be denied with prejudice and the motion for summary determination should be granted. The Division's representative avers that:

"In June 1994, then Governor Mario Cuomo authorized the payment of refunds to all taxpayers who 1) paid personal income tax on their federal pension income and 2) had filed timely refund claims pursuant to Tax Law § 687."

Furthermore, Mr. Friedman contends that the Division's policy of paying refunds to all taxpayers who had filed timely claims pursuant to Tax Law § 687 is consistent with the dictates of the United States Supreme Court decisions in McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 496 US 18, 110 L Ed 2d 17, Harper v. Virginia Dept. of Taxation, 509 US 86, 125 L Ed 2d 74 and Reich v. Collins, 513 US 106, 130 L Ed 2d 454.

Mr. Friedman asserts that in the instant case petitioners failed to timely file refund claims or amended returns pursuant to Tax Law § 687.

Mr. Bellamy is a Tax Technician II with the Division of Taxation and has held this position since 1967. Mr. Bellamy's responsibilities include the review and processing of refund claims made by Federal pension recipients who were taxed on that income prior to 1989.

In his affidavit in support of the motion, Mr. Bellamy affirmed that he reviewed petitioners' file and their refund claims for 1987 and 1988. He states that petitioners filed their 1987 New York State personal income tax return on or before April 15, 1988, and their 1988 New York State personal income tax return on or before April 15, 1989; however, petitioners did not file claims for refund for those years before July 1994. He further notes that petitioners were issued a refund denial letter for the years 1987 and 1988 because petitioners did not file a claim for refund within three years of the filing of their original returns for those years.

Petitioners, Wilbur I. and Elenora M. Coons, filed their petition with the Division of Tax Appeals on February 1, 1996. Petitioners are requesting a refund of tax in the amount of \$3,169.00 for tax years 1987 and 1988. Petitioners are protesting the disallowance of their refund claims for New York State taxes paid on Mr. Coons's Federal pension income for those years. Petitioners made the following assertions:

"According to the U.S. Supreme Court ruling of 1989, Sates [sic] cannot tax federal pensions if they do not tax state pensions. However, this was not resolved by NYS until July, 1994. In the pree [sic] release, it was stated that '6500 federal pensioners would be receiving their refund checks within two months. The remainder will be asked for additional information and should get their refunds within two months of submitting this information.'

"Pensioners who heard nothing from the state contacted NYS Dept. of Taxation and were informed to file the forms. They were sent packages containing IT-201X instead of IT-113X for the years in question. Upon filing these claims, they received a notice of disallowance. The letter stated 'As this three year limitation on refund claims is statutory, only a change in the law would permit this Department to pay refund claims filed after the three year limitation has expired.'

"It seems to us that all federal pensions qualify for these refunds whether or not the appropriate forms were filed. Why would the state discriminate against one taxpayer over another? Because of this apparent discriminatory action H & R Block contacted the State as to the standing of the federal pensioner refund. They were informed to continue filing IT-113X since there eas [sic] pending legislation opening the window of the three year rule for the federal pensioners. It appears that nothing has been acted upon and is still in committee."

Attached to petitioners' petition are the following documents: (1) a copy of the Notice of Disallowance letter, dated October 24, 1994, issued by the Division to petitioners in which petitioners were informed that their refund claim in the amount of \$3,169.00 was disallowed in full for the years 1987 and 1988 because either no tax was paid on their pension income or the claims for refund for those years were not timely pursuant to Tax Law § 687; (2) a copy of a letter dated November 30, 1995, from Frank A. Landers of the Division of Tax Appeals, addressed to Lorraine Clute, District Manager of H & R Block, in which she was informed of the Division of Tax Appeals administrative hearing process and the necessity for petitioners to file a petition in order to protest the Notice of Disallowance which they had received; and (3) a copy of a letter, dated November 16, 1995, from Ms. Clute, addressed to the Division of Tax Appeals, in which she stated that H & R Block was assisting petitioner Wilbur Coons in

appealing the Division's denial of Mr. Coons's "refund claim of tax paid on a federal pension" and also set forth H & R Block's position on this issue.¹

The Division, in its answer, dated April 17, 1996, denied all but the first two sentences of the allegations and stated inter alia that: (1) petitioner was a former Federal employee who paid New York State tax on his Federal pension income for the years 1987 and 1988; (2) petitioners failed to file a claim for refund within three years of the filing of the return for the years in issue; and (3) therefore, petitioners' claims for refund were properly denied as untimely pursuant to Tax Law § 687. In addition, the Division asserted that petitioners bear the burden of proving the disallowance was erroneous and/or improper.

OPINION

In her determination below, the Administrative Law Judge sustained the Division's denial of petitioners' claim for refund for the years 1987 and 1988 based upon the fact that such claim was barred by the three-year statute of limitations contained in Tax Law § 687(a). Accordingly, since there were no material or triable issues of fact, the Administrative Law Judge granted the Division's motion for summary determination in its favor.

The Administrative Law Judge, based upon her review of Harper v. Virginia Dept. of Taxation (*supra*) and McKesson Corp. v. Division of Alcoholic Beverages & Tobacco (*supra*), held that the refund provisions of Tax Law § 687(a) provided meaningful backward-looking relief such that any unconstitutional deprivation could be rectified and that these provisions satisfied the Due Process Clause of the 14th Amendment.

On exception, petitioners state that they do not dispute the facts as found by the Administrative Law Judge. However, petitioners assert that the Division failed in its responsibility to notify all taxpayers, who had paid income tax on their Federal pensions, that the law was being challenged on constitutional grounds and that all affected taxpayers should file claims for refund prior to the statute of limitations running on them. Petitioners claim that the Division was remiss in its obligation to inform taxpayers of potential refunds.

¹It is noted that the position set forth in the letter is identical to the assertions set forth in petitioners' petition (see, above).

After careful review of the Administrative Law Judge's determination and the cases cited therein, we see no reason to disturb her conclusions. The Administrative Law Judge properly decided all issues and she correctly applied the Tax Law and relevant case law to the facts of this case. Further, petitioners' assertion that the Division failed in its responsibility to notify all affected taxpayers is rejected. This argument was addressed in Matter of Jones (Tax Appeals Tribunal, January 9, 1997) wherein we stated that:

"we refuse to impose on the Division the duty of personally advising every taxpayer who is potentially subject to a refund of his or her right to such a refund because of a change in the law given the State's constitutionally sound scheme which 'rectified any unconstitutional deprivation' (Harper v. Virginia Dept. of Taxation, supra) while simultaneously respecting the State's fisc (McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, supra)."

Therefore, we 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 Wilbur I. and Elenora M. Coons is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Wilbur I. and Elenora M. Coons is denied; and
4. The Notice of Disallowance dated October 24, 1994 is sustained.

DATED: Troy, New York
May 29, 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