

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
EDITH E. STEEVES	:	DECISION
	:	DTA No. 814737
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law for	:	
the Years 1985, 1986 and 1987.	:	

Petitioner Edith E. Steeves, 27 Kling Terrace, Voorheesville, New York 12186, filed an exception to the determination of the Administrative Law Judge issued on August 8, 1996. Petitioner appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel).

Petitioner did not file a brief on exception. The Division of Taxation submitted a letter stating it would not be filing a brief in opposition. Oral argument was not requested.

The Tax Appeals Tribunal renders the following decision per curiam. Commissioner Pinto took no part in the consideration of this decision.

ISSUE

Whether the Division of Taxation properly denied petitioner's claims for refund of tax paid on Federal pension income on the basis that the claims were not timely filed pursuant to 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, Edith E. Steeves, timely filed New York State personal income tax returns for the years 1985, 1986 and 1987.

Petitioner filed refund claims of personal income tax for the years 1985, 1986 and 1987 in October 1994. No claims for refund or amended returns were filed by petitioner for these years prior to October 1994.

The Division of Taxation ("Division") issued to petitioner a Notice of Disallowance, dated December 27, 1994, denying all three of the "refund claim[s] you have filed" on the basis that they were not timely filed. The notice stated, in pertinent part, as follows:

"Under New York State Law (Tax Law section 687), refund claims for any overpayment of tax must be filed by the taxpayer within three (3) years from the date the return was filed or two (2) years from the date the tax was paid, whichever of such periods expires the later. As this three (3) year limitation on refund claims is statutory (a matter of law), only a change in the law would permit this Department to pay refund claims filed after the three (3) year limitation has expired."

The Division submitted the affidavit of Charles Bellamy, Tax Technician II, whose responsibility it was to review and process refund claims made by Federal pension recipients who were taxed on that income prior to 1989. Mr. Bellamy reviewed petitioner's refund claims for the years in issue and determined that the 1985 income tax return was filed on or before April 15, 1986; the 1986 income tax return was filed on or before April 15, 1987; and the 1987 income tax return was filed on or before April 15, 1988. No amended returns were filed for any of the years in issue. As stated above, petitioner's refund claims for each of these years were filed in October 1994.

Petitioner argues that she should not be penalized for filing the incorrect forms and that refunds should be issued regardless of which forms were filed, i.e., IT-113X, claim for refund, or the IT-201X, amended personal income tax return. However, petitioner never disclosed which form she used to request her refund, and her choice of forms was not a basis for disallowance of the claims.

OPINION

In his determination, the Administrative Law Judge concluded that the matter was properly decided through summary determination since there were no material and triable issues of fact

presented. Based on a review of Davis v. Michigan Dept. of Treasury (489 US 803, 103 L Ed 2d 891), McKesson Corp. v. Division of Alcoholic Beverages & Tobacco (496 US 18, 110 L Ed 2d 17) and Harper v. Virginia Dept. of Taxation (509 US 86, 125 L Ed 2d 74), the Administrative Law Judge 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. The Administrative Law Judge, therefore, found that the Division properly denied petitioner's refund claims on the basis that same were not timely filed.

On exception, petitioner asserts that the Division failed in its responsibility to notify all affected taxpayers and that a public announcement was made only after it was too late for taxpayers to timely file claims for refund. Petitioner also maintains that other taxpayers who had filed claims for refund at the same time as her received refunds and it is against equity and good conscience to deny her claims for refund as untimely filed.

We affirm the determination of the Administrative Law Judge. After a thorough review of the Administrative Law Judge's determination and the cases cited therein, we see no reason to alter his analysis or ultimate conclusion. Further, petitioner's 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).

"In addition, we note that on November 6, 1989, the Division did issue a Technical Services Bureau memorandum to the public which informed taxpayers of their right to file protective refund claims during the pendency of two cases dealing with the issue of whether Davis v. Michigan Dept. of Treasury (supra) was to apply retroactively (see, TSB-M-89[9]I). Hence, although petitioner was

placed on notice of his right to file protective refund claims, he chose not to exercise said right."

Finally, addressing petitioner's argument that other taxpayers who filed refund claims at the same time as her received refunds, we note that there is no evidence in the record to support such a finding. Moreover, this Tribunal has consistently held in every case brought before us to date by Federal retirees that refunds cannot be granted unless a timely claim has been filed (see, Matter of Reiter, Tax Appeals Tribunal, February 27, 1997; Matter of Hinds, Tax Appeals Tribunal, February 13, 1997; Matter of Lonergan, Tax Appeals Tribunal, February 13, 1997).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Edith E. Steeves is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Edith E. Steeves is denied; and
4. The Notice of Disallowance dated December 27, 1994 is sustained.

DATED: Troy, New York
April 10, 1997

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

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