

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>JAMES AND JOAN J. CHRISTODOLOU</b>	:	DECISION
	:	DTA No. 815088
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1986, 1987 and	:	
1988.	:	

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Petitioners James and Joan J. Christodolou, 405 West Sycamore Street, Rome, New York 13440, filed an exception to the determination of the Administrative Law Judge issued on January 16, 1997. Petitioners appeared *pro se*. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel).

Petitioners submitted a brief in support of their exception. The Division of Taxation filed a brief in opposition. Petitioners filed a reply brief. Petitioners' request for oral argument was denied.

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

***ISSUES***

I. Whether petitioners' claim for refund for the year 1985 was sufficient to put the Department of Taxation and Finance on notice that petitioners were also seeking a refund for the years 1986, 1987 and 1988.

II. Whether petitioners' claim for refund of personal income taxes paid for the years 1986, 1987 and 1988 should be granted pursuant to the special refund authority found in Tax Law § 697(d).

### ***FINDINGS OF FACT***

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

Petitioners, James Christodolou and Joan J. Christodolou,<sup>1</sup> filed a petition for review of a denial of claims for refund of New York State personal income taxes for the years 1986, 1987 and 1988. The Division of Taxation ("Division") issued a Notice of Disallowance denying refunds on the ground that the refund claims were not filed within the period of limitation set forth at Tax Law § 687(a).

Petitioner timely filed New York State personal income tax returns for the years in issue. Petitioner filed a 1986 personal income tax return on or before April 15, 1987, filed a 1987 personal income tax return on or before April 15, 1988 and filed a 1988 personal income tax return on or before April 15, 1989.

Petitioner retired from the Federal Aviation Administration in 1983. During the tax years in issue, he paid New York State personal income tax on his Federal pension income.

In April 1989, petitioner filed what he refers to as a "Protective Claim" through H&R Block. This was a claim for refund of New York State personal income taxes paid for 1985. It was petitioner's understanding that this claim would not only be valid for 1985 but would also serve as a valid claim for later years.

The basis for petitioner's refund claim was provided by the United States Supreme Court decision in ***Davis v. Michigan Dept. of Treasury*** (489 US 803, 103 L Ed 2d 891) which invalidated a Michigan statute exempting state pensions but not Federal pensions from income tax. The Court decided the ***Davis*** case on March 28, 1989. Shortly thereafter, many Federal pensioners filed claims for refund of New York State income taxes paid on Federal pensions. Following the Davis decision, the New York State Legislature amended the Tax Law to exclude

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<sup>1</sup>Joan J. Christodolou is included as a petitioner because she filed joint returns with her husband for each of the years in issue. The issues raised in the petition relate only to the income of Mr. Christodolou; therefore, reference made from hereon to "petitioner" may be understood to be references to Mr. Christodolou.

Federal pensions, as well as New York State pensions, from taxation; however, the amended law applies only to Federal pensions received in taxable years beginning on or after January 31, 1989 (L 1989, ch 664, §§ 1, 2, effective July 21, 1989).

The Division originally took the position that refund claims could not be issued for years prior to 1989, and it informed petitioner of that position. Following a series of court cases concerning the retroactive effect of the ***Davis*** decision, the Division reversed its policy and began issuing refunds to all Federal pensioners who (1) had paid New York State income tax on Federal benefits and (2) had filed timely claims for refund.

In June 1995, the Division issued a refund to petitioner for 1985 but informed him that no refund could be issued for later years because he had not filed separate refund claims for those years. Petitioner then filed separate claims for refund of income taxes for 1986, 1987 and 1988.

In September 1995, the Division issued to petitioner a Notice of Disallowance for the subject years denying petitioner's claims on the ground that they were not filed within the statutory period of limitation.

Following a conciliation conference, the Division issued a Conciliation Order, dated March 29, 1996, sustaining the Notice of Disallowance.

#### ***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge found that there were no material issues of fact in dispute, thus, she concluded that a determination could be issued as a matter of law in favor of any party based on the motion for summary determination made in this case.

The Administrative Law Judge determined that petitioner's claim for refund did not fall within the meaning and intent of Tax Law § 697(d). Relying on ***Matter of Fiduciary Trust Co. v. State Tax Commn.*** (120 AD2d 848, 502 NYS2d 119), the Administrative Law Judge noted that while the refund authority granted by Tax Law § 697(d) is discretionary, petitioner failed to show that the moneys at issue were erroneously or illegally collected or paid by the taxpayers under a mistake of facts. Thus, the Administrative Law Judge sustained the Division's denial of

petitioner's refund claims since such claims were not timely filed pursuant to Tax Law § 687(a) and granted summary determination in favor of the Division.

### ***ARGUMENTS ON EXCEPTION***

Petitioner argues that his claim for refund for the tax year 1985, which was timely filed in 1989, is evidence of meeting the minimum standards for registering a protest which entitles him to a presumption that he timely filed an informal claim with the understanding that it would serve as a valid claim for the tax years 1986, 1987 and 1988.

Furthermore, petitioner continues to argue that his refund be granted pursuant to the special refund authority set forth in Tax Law § 697(d).

In opposition, the Division cites to ***Matter of Jones*** (Tax Appeals Tribunal, January 9, 1997), ***Matter of Hinds*** (Tax Appeals Tribunal, February 13, 1997) and ***Matter of Lonergan*** (Tax Appeals Tribunal, February 13, 1997) as further support of the determination rendered by the Administrative Law Judge in this matter.

### ***OPINION***

The first issue to be addressed is whether petitioner's claim for refund for the tax year 1985 can be deemed an informal claim for refund for the years 1986, 1987 and 1988. We have held that a valid informal claim for refund must have a written component that adequately appraises the taxing authority that a refund is requested and the tax year that is in question (***Matter of Rand***, Tax Appeals Tribunal, May 10, 1990). Accordingly, petitioner's claim for refund for the tax year 1985 alone is not sufficient to notify the Department that petitioner was also requesting a refund for the years 1986, 1987 and 1988.

We affirm the determination of the Administrative Law Judge on the issue of whether petitioner is entitled to relief pursuant to the special refund authority of Tax Law § 697(d). Tax Law § 697(d) states as follows:

"Special refund authority.--Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of

limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller."

It is clear that petitioner has failed to show that the taxes he paid on his Federal pension income were paid under a mistake of facts. Petitioner paid income tax on his Federal pension income as was required by law at the time when his income tax returns were filed for the years in question. Although the statute has been rendered unconstitutional, this does not alter the fact that at the time of payment by petitioner, the payments were made pursuant to law (*see, Matter of Fiduciary Trust Co. v. State Tax Commn., supra; see also, Matter of Walter*, Tax Appeals Tribunal, May 15, 1997; *Matter of Lonergan, supra*). Thus, Tax Law § 697(d) does not apply to petitioner.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of James and Joan J. Christodolou is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of James and Joan J. Christodolou is denied; and
4. The Notice of Disallowance dated September 25, 1995 is sustained.

DATED: Troy, New York  
September 25, 1997

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Donald C. DeWitt  
President

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Carroll R. Jenkins  
Commissioner

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Joseph W. Pinto, Jr.  
Commissioner