

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
NICHOLAS R. AND MARIA L. NUZZI	:	DECISION
for Redetermination of a Deficiency or for	:	DTA No. 815096
Refund of New York State and New York City	:	
Income Taxes under Article 22 of the Tax Law	:	
and the New York City Administrative Code for	:	
Years 1985 and 1986.	:	

Petitioners Nicholas R. and Maria L. Nuzzi, 1009 Old Town Road, Coram, New York 11727-1853, 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. Oral argument was not requested.

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

ISSUE

Whether petitioners are entitled to a refund of personal income taxes paid on Federal pension income, when their refund claim was not filed within three years of their filing of tax returns for the years at issue.

FINDINGS OF FACT

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

During 1985 and 1986, petitioners received income from a Federal pension, and they timely filed New York State income tax returns for each of these years, on which they reported the Federal pension income as taxable to New York State.

According to the affidavit of Charles Bellamy, a tax technician, dated October 9, 1996, petitioners "failed to file refund claims or amended returns within three years of the filing of the original returns." According to Mr. Bellamy, petitioners filed a claim for refund for taxes paid on Federal pension income for the 1985 and 1986 tax years on September 23, 1994. Consequently, petitioners were issued a notice of disallowance for the 1985-86 tax years. The notice of disallowance for the years at issue was not included in the motion record.

Petitioners attached to their petition photocopies of various letters to them from the Division of Taxation ("Division"), including a Notice of Disallowance dated April 19, 1991 which rejected a refund claim for the tax year 1987. However, the tax year 1987 is not at issue in the matter at hand. Presumably, the other letters from the Division to petitioners, attached to the petition, which all predate September 23, 1994, the date on which the Division maintains petitioners filed a refund claim for 1985 and 1986, also regard the tax year 1987. It is observed that these other letters do not specifically reference a tax year.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge concluded that petitioners did not show facts sufficient to require a hearing on whether they filed a refund claim for 1985 and 1986 within three years of their filing of tax returns for such years. Moreover, based upon the affidavit of Charles Bellamy, the Administrative Law Judge concluded that there was no issue of fact concerning petitioners' filing of a refund claim for 1985 and 1986 within three years of their filing of tax returns for those years. Therefore, relying on our decision in *Matter of Jones* (Tax Appeals Tribunal, January 9, 1997) and *Matter of Burkhardt* (Tax Appeals Tribunal, January 9, 1997), the Administrative Law Judge determined that Federal retirees who failed to file a timely claim for refund within the three-year statute of limitations for refund claims under Tax Law § 687

were not entitled to a refund of income tax paid on Federal pension income. Accordingly, the Administrative Law Judge granted the Division's motion for summary determination in its favor and sustained the Notice of Disallowance issued to petitioners for the years 1985 and 1986.

ARGUMENTS ON EXCEPTION

Petitioners continue to argue that they are entitled to the refund despite their failure to timely file a claim for refund within the three-year statute of limitations period set forth in Tax Law § 687. Petitioners concede that their claim for refund for the tax year 1985 was due on April 15, 1989 and that their claim for refund for 1986 was due on April 15, 1990. However, petitioners emphasize that the law concerning the taxability of Federal pension income was not changed until much later than the above-mentioned dates for filing of their refund claims for 1985 and 1986.

In opposition, the Division requests that the Administrative Law Judge's determination be sustained based on our decisions in *Matter of Jones (supra)*, *Matter of Hinds* (Tax Appeals Tribunal, January 17, 1997) and *Matter of Lonergan* (Tax Appeals Tribunal, January 17, 1997).

OPINION

We affirm the determination of the Administrative Law Judge. We have consistently denied a claim for refund of personal income taxes paid on Federal pension income where the claim was not filed within the three-year statute of limitations set forth in Tax Law § 687(a) (*see, Matter of Walter*, Tax Appeals Tribunal, May 15, 1997; *Matter of Reiter*, Tax Appeals Tribunal, February 27, 1997; *Matter of Mostachetti*, Tax Appeals Tribunal, February 13, 1997). Therefore, since petitioners concede that their refund claims were not timely filed, their claims for refund were properly denied.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Nicholas R. and Maria L. Nuzzi is denied;
2. The determination of the Administrative Law Judge is sustained;

3. The petition of Nicholas R. and Maria L. Nuzzi is denied; and

4. The Notice of Disallowance is sustained.

DATED: Troy, New York
October 2, 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