

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>KERMIT H. KAPELLE (DECEASED)</b>	:	DECISION
<b>AND JOAN A. KAPELLE</b>	:	DTA NO. 815668
	:	
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax Under Article 22 of the Tax Law	:	
for the Years 1987 and 1988.	:	

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Petitioners Kermit H. Kapelle (deceased) and Joan A. Kapelle, 1466 Helderberg Avenue, Schenectady, New York 12306, filed an exception to the determination of the Administrative Law Judge issued on September 18, 1997. Petitioners appeared *pro se*. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

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

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

***ISSUE***

Whether petitioners' claims for refund of tax 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.

Based on the affidavit of Charles H. Bellamy, a Tax Technician II for the Division of Taxation ("Division"), petitioners, Kermit H. Kapelle and Joan A. Kapelle, filed a 1987 New York State personal income tax return on or before April 15, 1988 and a 1988 New York State personal income tax return on or before April 15, 1989. On each return, petitioners reported and paid tax on Federal pension income.

Petitioners filed claims for refund of personal income tax for the years 1987 and 1988 seeking refunds of the income tax paid on the Federal pension income. The refund claims were filed on or about November 16, 1994. They did not file refund claims or amended returns for these years before November 1994.

On or about January 30, 1995, the Division issued a Notice of Disallowance in full for the years 1987 and 1988. The basis of the disallowance was that petitioners did not file a claim for refund within three years of the filing of their returns.

Petitioner Joan Kapelle filed a petition which stated that she wished to have a petition on file in case there was a change in the Tax Law regarding petitioners' claim for refund.

The Division filed an answer, dated April 24, 1997, which asserted that petitioners failed to file a claim for refund within three years of the filing of the return for the years in issue and that therefore the refund was denied as untimely. The Division further alleged that the "1994 decision to approve refund claims for those who paid New York State income tax on their federal

pension income was solely limited to those who had filed timely refund claims under the Tax Law."

The Division filed a motion for summary determination dated June 2, 1997. In its motion papers, the Division argued that petitioners failed to file a timely refund claim for the years 1987 and 1988.

In her reply papers, Mrs. Kapelle argued that she and her husband never knew that a refund was due for the 1987 and 1988 tax years. They also did not know that there was a time limit for filing a refund claim. Mrs. Kapelle submits that, if they had known, they would have promptly filed a claim for refund. Mrs. Kapelle explains that the Watervliet Arsenal, where her husband was employed, never notified them that a refund was due and they never saw anything in the newspapers or on television. Petitioners learned about the opportunity for a refund when they encountered an individual, who used to work with Mr. Kapelle, in the mall one day. When petitioners learned about the opportunity for a refund, Mrs. Kapelle immediately called a tax preparer for an appointment to prepare a refund claim. Mrs. Kapelle notes that she contacted Senator Hugh T. Farley and that he stated that taxes were illegally collected from Federal and military retirees. Mrs. Kapelle questions why, if this is the case, she cannot obtain a refund which is due despite the statute of limitations. It is noted by Mrs. Kapelle that she is a widow and that she could utilize the money for property and school taxes. Mrs. Kapelle submits that there should be an exception to the statute of limitations for people who are unaware of their right to a refund.

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

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. The

Administrative Law Judge, in reviewing *Davis v. Michigan Dept. of Treasury* (489 US 803, 103 L Ed 2d 891), noted that the United States Supreme Court held that state taxation of Federal pension income while exempting from taxation pensions from state or local government employees was unconstitutional. In light of the *Davis* decision, New York State was required to amend Tax Law § 612(c)(former [3]) to conform with the *Davis* decision by providing the exemption from income tax to include Federal pension income beginning with the tax year 1989 (*see*, L 1989, ch 664, §§ 1-3). As noted by the Administrative Law Judge, this relief was prospective only.

The issue of retroactivity was decided by the Court in *Harper v. Virginia Dept. of Taxation* (509 US 86, 125 L Ed 2d 74). The Court held that, in fact, *Davis* did apply retroactively, however, it did not determine that a refund was owed in the particular case therein. Rather, the Court remanded the matter for a determination on whether state law provided an adequate remedy that complied with the due process requirements of the constitution (*Harper v. Virginia Dept. of Taxation, supra*, 125 L Ed 2d, at 89, *citing McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 US 18, 110 L Ed 2d 17). In relying on the language of *McKesson*, 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 14<sup>th</sup> Amendment. Therefore, since there was no dispute that petitioners failed to timely file their refund claims for the years 1987 and 1988, such claims were properly denied by the Division.

Lastly, the Administrative Law Judge rejected petitioners' argument that the statute of limitations should be set aside in this case because petitioners did not know until after the three-

year statute of limitations had passed that New York State's taxing of Federal pension income had been determined to be unconstitutional (*see, Matter of Jones*, Tax Appeals Tribunal, January 9, 1997). Thus, the Administrative Law Judge granted the Division's motion for summary determination in its favor.

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

Petitioners continue to argue that since the pension income was taxed illegally, then, regardless of the three-year statute of limitations period set forth in Tax Law § 687(a), their money should be rightfully refunded to them. Furthermore, petitioners continue to maintain that many of the Federal retirees did not know that they were required to file a claim with the Tax Department in order to secure a refund. Petitioners assert that there should be an exception to the statute of limitations for people who are unaware of their right to a refund.

In opposition, the Division argues that the Tribunal has consistently held that Federal retirees who failed to file a timely claim for refund within the three-year statute of limitations set forth in Tax Law § 687(a) were not entitled to a refund of income tax paid on their pension income (*see, Matter of Nuzzi*, Tax Appeals Tribunal, October 2, 1997; *Matter of Walter*, Tax Appeals Tribunal, May 15, 1997; *Matter of Reiter*, Tax Appeals Tribunal, February 27, 1997; and *Matter of Mostachetti*, Tax Appeals Tribunal, February 13, 1997). Furthermore, the Division notes that the Tribunal has similarly rejected petitioners' argument that taxpayers were not properly apprised of the need to file timely refund claims (*see, Matter of Banco*, Tax Appeals Tribunal, April 17, 1997; *Matter of Jones, supra*). Therefore, the Division requests that the determination of the Administrative Law Judge be sustained.

In reply, petitioners reiterate the same arguments as set forth in their exception and in their response to the Division's motion for summary determination.

***OPINION***

Tax Law § 687(a) provides that a claim for refund of an overpayment of income tax must be filed within three years from the time the return was filed. There is no dispute that petitioners failed to timely file their refund claims for 1987 and 1988. Petitioners assert that since they were unaware of the three-year time frame within which to file a claim for refund, the statute of limitations should be waived. This contention must be rejected since there exists no legal basis for our waiving the statute of limitations period due to petitioners' lack of knowledge of the law (*see, Matter of Jones, supra*). Since the Administrative Law Judge adequately and completely dealt with the issue, we affirm his determination for the reasons set forth therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Kermit H. Kapelle (deceased) and Joan A. Kapelle is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Kermit H. Kapelle (deceased) and Joan A. Kapelle is denied; and

4. The Notice of Disallowance is sustained.

DATED: Troy, New York  
April 9, 1998

/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