

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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| In the Matter of the Petition | : | |
| of | : | |
| ARTHUR L. AND RITA BURZYNSKI | : | DECISION |
| for Redetermination of a Deficiency or for Refund of | : | DTA NO. 816300 |
| Personal Income Tax under Article 22 of the Tax Law | : | |
| for the Year 1985. | : | |

Petitioners Arthur L. and Rita Burzynski, 1000 Renaud Drive, Lot # 51, Scott, Louisiana, 70583-4933, filed an exception to the determination of the Administrative Law Judge issued on August 20, 1998. Petitioners appeared *pro se*. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Herbert M. Friedman, Jr., Esq., of counsel).

Neither party submitted a brief. Oral argument was not requested.

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

ISSUE

Whether the Division of Taxation properly denied petitioners' claim for refund of personal income taxes paid on Federal pension income as untimely pursuant to the three-year statute of limitations period set forth in Tax Law § 687(a).

FINDINGS OF FACT

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

Petitioners, Arthur L. and Rita Burzynski, filed a timely joint New York State personal income tax return for the year 1985. That is, petitioners filed their 1985 return on or before April 15, 1986. Petitioners reported and paid tax on Federal pension income paid to Arthur L. Burzynski on their return.

On or about November 14, 1994, petitioners filed a claim for refund of tax paid on Mr. Burzynski's Federal pension income for 1985. Petitioners did not file any refund claim for 1985 before November 14, 1994.

The Division of Taxation ("Division") subsequently denied petitioners' refund claim as untimely filed.

The facts set forth above were established through the affidavit of Charles Bellamy, submitted as part of the Division's motion papers. Mr. Bellamy is employed by the Division as a Tax Technician II. His duties include the review and processing of refund claims made by Federal pension recipients who were taxed on their income prior to 1989. In the performance of such duties, Mr. Bellamy reviewed the file for petitioners and their refund claim for 1985.

In support of their position petitioners submitted copies of two letters. Only a part of each of the letters has been submitted; the rest has been redacted. One of the letters is dated February 13, 1998 and is addressed to Arthur L. Burzynski. This letter expresses an opinion regarding the process of requiring Federal retirees to individually claim refunds and the likelihood of success of those claims. Although written on the letterhead of a Milwaukee, Wisconsin law firm, the portion of the letter submitted does not indicate who wrote it. The second letter submitted is dated December 20, 1996 and is addressed to a Col. Paul W. Arcari, USAF (Ret.), of the Retired Officers Association. This letter states that New York has denied

most refund claims for the year 1985 and states that the three-year statute of limitations has been the basis for such denials. The letter also comments that the State has ignored the advice it gave retirees in early April 1989, which was “that no refund claim need be filed because, if *Davis* [*Davis v. Michigan Dept. of Treasury*, 489 US 803, 103 L Ed 2d 891] were determined to be retroactive, all Federal retirees would receive refunds.” Like the other letter submitted, this letter was written on the letterhead of the Milwaukee law firm, but does not indicate its author.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge reasoned that, since petitioners did not contest any of the facts set forth in the Division’s motion, there were no material issues of fact in dispute, thus, he 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 noted that petitioners timely filed their 1985 tax return and did not file a refund claim within three years of the date of such filing. The Administrative Law Judge stated that the Tax Appeals Tribunal (hereinafter the “Tribunal”) has consistently denied claims for refund of personal income taxes paid on Federal pension income where such claims were not filed within the time frame set forth in Tax Law § 687(a). Therefore, the Administrative Law Judge denied petitioners’ claim for refund in this case.

ARGUMENT ON EXCEPTION

Petitioners allege that they received refunds for the tax years 1986, 1987 and 1988 and, thus, they state that since their refund claims for those three years also were not timely filed, they should receive a refund for 1985 despite such claim being untimely filed.

OPINION

After reviewing the determination of the Administrative Law Judge and the record herein, we find that the Administrative Law Judge completely and adequately dealt with the issue presented to him. Accordingly, we affirm his determination for the reasons set forth therein.

However, we find it necessary to address the submission of certain documents made by petitioners after the opportunity for the filing of briefs had expired. By correspondence received by the Tribunal on March 29, 1999, petitioners submitted several documents in support of their exception. Many of the documents were previously submitted, either attached to their petition or in opposition to the motion by the Division for summary determination in this matter. With respect to the other documents not previously submitted to the Administrative Law Judge, we must reject this attempt to introduce evidence into the record at this stage of the proceedings when the record is closed. We have held that a fair and efficient hearing process must be defined and final, and the acceptance of evidence after the record is closed is not helpful towards that end and does not provide an opportunity for the adversary to question the evidence on the record (*Matter of Purvin*, Tax Appeals Tribunal, October 9, 1997; *see also, Matter of Schoonover*, Tax Appeals Tribunal, August 15, 1991).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Arthur L. and Rita Burzynski is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Arthur L. and Rita Burzynski is denied; and

4. The Division of Taxation's denial of the refund claim is sustained.

DATED: Troy, New York
June 3, 1999

/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