

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
LEONARD A. AND ROSALIE WALKER	:	DECISION
	:	DTA NO. 816403
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law	:	
for the Year 1990.	:	

Petitioners Leonard A. and Rosalie Walker, 992 Mercer Road, Princeton, New Jersey 08540, filed an exception to the determination of the Administrative Law Judge issued on October 1, 1998. Petitioner Leonard A. Walker appeared *pro se* and for his wife, Rosalie Walker. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Peter T. Gumaer, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a letter in opposition. Petitioners filed a reply brief.

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

ISSUE

Whether the Division of Taxation properly disallowed petitioners' claim for refund of personal income taxes for the year 1990.

FINDINGS OF FACT

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

Petitioners failed to file a timely New York State income tax return for 1990.

Petitioners filed a New York State income tax return for 1990 on November 10, 1994. By this late-filed return, petitioners sought a refund of 1990 income tax in the amount of \$766.00, representing income tax that had been overwithheld during 1990 from the wages of one of the petitioners. A copy of the 1990 income tax return was not made a part of the record created by the parties, reflecting the fact that the factual record is limited.

The Division contends that the due date for petitioners' filing of their 1990 income tax return was extended to August 15, 1991. In an affidavit dated July 13, 1998, a Tax Technician II, Charles Bellamy, stated that he "personally checked the [Department's] master records for the extensions petitioner referred to in the petition." According to Mr. Bellamy:

3. In this case, the Department's records reflect that petitioner filed only one extension with New York State to file his 1990 return. This entitled the petitioner to one 4-month extension to file his return.

4. Petitioner may have filed other forms for extensions with the federal government. However, forms filed with the federal government do not automatically extend the New York deadline. Taxpayers must file either the New York extension form (IT-370) or the federal form clearly marked "New York State Copy" in the top margin.

* * *

8. Consequently, petitioner's 1990 return was due August 15, 1991, and the latest date petitioner could file for a refund was August 15, 1994.

In contrast, petitioners argue that the due date for their 1990 tax return had been extended to November 15, 1991. In addition to the four-month extension until August 15, 1991 noted by the Division, petitioners maintain that they obtained a two-month extension until October 15, 1991 by filing a Federal form 2188 and an additional 30-day extension until November 15, 1991 pursuant to a phone conversation on July 18, 1994 with an employee of the Division referred to by petitioners as Mr. Jegabbi. Petitioner Leonard A. Walker by a letter dated August 30, 1994 referenced his phone conversation with Mr. Jegabbi as follows:

By telephone on July 18, 1994, you were considerate enough to allow me thirty (30) days' time in which to respond to the above-referenced inquiry.¹

Petitioners' late-filed return for 1990 was treated by the Division as a claim for refund of \$766.00. The Division denied this refund claim as untimely.²

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge analyzed Tax Law § 687(a) and (i) and held that petitioners were required to file their claim for refund for the year 1990 on or before April 15, 1994 unless they had filed timely extension requests and received such extensions of time within which to file their tax return for 1990. The Administrative Law Judge concluded that petitioners had established that they received an initial four month extension until August 15, 1991 within which to file their 1990 return. Therefore, the Administrative Law Judge held that

¹This letter referenced a case # X-270278011 involving tax years 1990, 1991, and 1992.

²The Division's letter denying petitioners' refund claim was not made a part of the record. Included in the record is a letter dated December 10, 1996 from a Tax Technician II, Dorothy Doucet, which elaborated on the Division's reasons for denying the claim by referencing prior decisions of the State Tax Commission and the Tax Appeals Tribunal.

petitioners were required to file their claim for refund on or before August 15, 1994 in order to prevail in this matter. However, the Administrative Law Judge found that petitioners did not file their claim for refund until November 10, 1994 and, thus, he determined that the Division properly disallowed such refund claim. Accordingly, the Administrative Law Judge granted summary determination in favor of the Division and denied petitioners' motion for summary determination in their favor.

ARGUMENTS ON EXCEPTION

Petitioners disagree that they were not provided with further extensions of time within which to file their 1990 tax return other than the initial four month extension until August 15, 1991. Petitioners assert that they, in fact, filed Federal form 2188 with New York State and that they had furnished the Division with a true and accurate copy of such form on several occasions. Furthermore, petitioners argue that they have continuously contended that on July 18, 1994, they were verbally granted a 30-day extension for filing their 1990 tax return until November 15, 1991. Petitioners acknowledge that such request was made several years after the return was already late, however, petitioners reading of Tax Law § 687(a) contemplates the consideration of “[any type of] extension of time for filing the return . . .” (Petitioners’ exception, p. 1A, ¶ 3). Thus, petitioners allege that since they secured a verbal extension on July 18, 1994 to file their 1990 tax return on or before November 15, 1991 and their claim for refund was filed on or about November 10, 1994, then such claim was timely filed since their refund claim was filed before November 15, 1994.

In opposition, the Division relies on the determination of the Administrative Law Judge as both proper and correct and, thus, it respectfully requests that such determination be sustained.

OPINION

Petitioners have provided us with the same arguments that they made before the Administrative Law Judge and, thus, have not given us any reason to modify the determination in any respect. Since the Administrative Law Judge adequately and correctly addressed the issues presented to him, we affirm his determination for the reasons set forth therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Leonard A. and Rosalie Walker is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Leonard A. and Rosalie Walker is denied; and
4. The denial of petitioners' claim for refund is sustained.

DATED: Troy, New York
September 23, 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