

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ANNA WASSERMAN	:	DECISION
	:	DTA NO. 817032
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income	:	
Tax under Article 22 of the Tax Law and the	:	
Administrative Code of the City of New York	:	
for the Year 1990.	:	

Petitioner Anna Wasserman, 2300 Olinville Avenue, Apt. 8F, Bronx, New York 10467, filed an exception to the determination of the Administrative Law Judge issued on May 4, 2000. Petitioner appeared by her son, Ralph Wasserman. The Division of Taxation appeared by Barbara G. Billet, Esq. (Herbert M. Friedman, Jr., and Michelle Helm, Esqs., of counsel).

Petitioner filed a brief in support of her exception. The Division of Taxation filed a brief in opposition. Oral argument, on petitioner's request, was heard on December 14, 2000 in New York, New York.

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

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for refund pursuant to Tax Law § 687(a).

FINDINGS OF FACT

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

Petitioner, Anna Wasserman, filed her 1990 New York State Resident Income Tax Return on April 15, 1995. Petitioner reported taxable income of \$29,853.71, with New York State and City income tax due thereon of \$2,953.00. Petitioner reported estimated tax payments of \$8,600.00 and thus reported an overpayment of tax of \$5,647.00. Petitioner requested that \$5,600.00 of the overpayment be applied to her 1991 estimated tax and that \$47.00 of the overpayment be refunded.

Between April 16, 1990 and April 13, 1991, petitioner made five payments of estimated tax for the 1990 tax year, which totaled \$8,600.00. Petitioner made no payments of tax for 1990 after April 13, 1991.

Petitioner applied for and received an automatic four-month extension of time to file her 1990 income tax return until August 15, 1991.

On December 28, 1995, the Division of Taxation issued a Notice of Disallowance to petitioner which disallowed her claim for credit and refund for the 1990 tax year.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge noted that Tax Law § 687(a) provides that a claim for credit or refund of an overpayment of personal income tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later. Finding the three-year period applicable in this case, the Administrative Law Judge stated that pursuant to Tax Law § 687(a), the amount of allowable refund cannot exceed

the portion of tax paid within the three-year period immediately preceding the filing of the refund claim plus the period of any extension of time for filing the return.

The Administrative Law Judge found that while petitioner filed her claim for refund of tax as part of her 1990 income tax return, that return was not filed until April 15, 1995. Since petitioner did not pay any portion of the amount she claimed as a refund during the three-year period immediately preceding the filing of the refund claim, the Administrative Law Judge concluded that the Division properly denied petitioner's refund claim pursuant to Tax Law § 687(a).

The Administrative Law Judge rejected petitioner's argument that the application of Tax Law § 687(a) in this case results in an improper confiscation of petitioner's overpayment of tax. The Administrative Law Judge noted that Tax Law § 687(a) is a statute of limitations and, as such, must be strictly adhered to by the judiciary.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that as a matter of fairness and justice, petitioner should not have her good faith overpayment of tax confiscated due to a literal but harsh interpretation of the Tax Law.

The Division, in opposition, argues that it is uncontroverted that petitioner did not file her 1990 income tax return claiming a refund of tax overpayment for that year until April 15, 1995. Additionally, she did not pay any portion of her 1990 tax after April 13, 1991 or within the three-year period immediately preceding the filing of her refund claim. As a result, she is precluded by Tax Law § 687 from receiving a credit or refund of taxes paid for the 1990 tax year.

OPINION

Tax Law § 687(a) provides as follows:

General. --- Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return

Petitioner has not articulated any legal basis to support her position nor has she provided any evidence that would allow her to meet her burden of proof to show that the Division's denial of refund or the Administrative Law Judge's conclusion is incorrect. Although we are sympathetic to petitioner's circumstances in this case, any relief for the seemingly harsh result produced by application of the statute of limitations set forth in Tax Law § 687 would require legislative action.

We find that the Administrative Law Judge completely and adequately addressed the issues presented to him and we see no reason to modify them in any respect. As a result, we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Anna Wasserman is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Anna Wasserman is denied; and

4. The Notice of Disallowance, dated December 28, 1995, is sustained.

DATED: Troy, New York
May 10, 2001

/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