

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JOHN E. AND MARY K. DURKIN	:	DECISION
	:	DTA NO. 817661
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1994.	:	

Petitioners John E. and Mary K. Durkin, 5 Ballard Avenue, Sloatsburg, New York 10974, filed an exception to the determination of the Administrative Law Judge issued on March 8, 2001. Petitioner Mary K. Durkin appeared *pro se* and on behalf of her husband, John E. Durkin. The Division of Taxation appeared by Barbara G. Billet, Esq. (Michelle M. Helm, Esq., of counsel).

Petitioners did not file a brief on exception. The Division of Taxation filed a brief in opposition. Petitioners filed a reply brief. 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 the Division of Taxation properly denied petitioners' 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.

Petitioners, John E. and Mary K. Durkin, jointly filed their 1994 New York State Resident Income Tax Return on November 5, 1998. They reported taxable income of \$56,781.00, with New York State income tax due thereon of \$1,433.00. Petitioners reported New York State tax withheld of \$3,681.86 and thus reported an overpayment of tax of \$2,248.86. They claimed a refund of the overpayment on their return.

The State tax withheld as reported on the return was so withheld by petitioners' employers during 1994.

Petitioners did not file for an extension of time to file their 1994 return.

By letter dated April 16, 1999, the Division of Taxation ("Division") advised petitioners that their claimed refund was denied as untimely.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge noted that pursuant to Tax Law § 687(a), a claim for 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. Payment of income tax withheld during any taxable year is deemed to have been paid by the taxpayer on April 15 of the following year pursuant to Tax Law § 687(i). Therefore, the Administrative Law Judge concluded that the tax withheld from petitioners during 1994 was deemed to have been paid on April 15, 1995. As petitioners did not file their 1994 return until November 5, 1998, the three-year period of limitations was applicable.

The Administrative Law Judge noted further that Tax Law § 687(a) provides where the three-year period is applicable, the amount of refund allowable may not 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 the three-year period immediately preceding petitioners' refund claim commenced on November 5, 1995. As the income tax withheld was deemed paid on April 15, 1995, more than three years elapsed before petitioners filed their refund claim. The Administrative Law Judge concluded that the Division had properly denied petitioners' refund claim.

The Administrative Law Judge rejected petitioners' argument that their claim for refund was timely because it was filed within three years of the date the return was filed. This argument failed to take into account the provisions of Tax Law § 687 which limit the amount of refund allowable to the amount of tax paid in the three years immediately preceding the filing of the refund claim. Although petitioners claimed that the Division's Publication 131 entitled "Your Rights and Obligations Under the Tax Law" supported their position, the Administrative Law Judge noted that the publication did not mention the limitation on the amount of allowable refund imposed by Tax Law § 687(a). The Administrative Law Judge also rejected petitioners' argument that the application of Tax Law § 687(a) is unconstitutional because if petitioners had underpaid their taxes under identical circumstances, the Division would not be barred from assessing them. The Administrative Law Judge noted that the Tax Law contains separate limitation provisions for refunds and assessments and there is no constitutional requirement for symmetry between the two.

ARGUMENTS ON EXCEPTION

On exception, petitioners acknowledge that Tax Law § 687(a) allows taxpayers three years from the time of the filing of their tax return to file a refund claim. They also acknowledge that

§ 687(a) limits the amount of refund allowed to the amount of tax paid within three years preceding the filing of the refund claim. Petitioners argue, however, that section 687(a) does not specify for what tax period the taxes are to be paid. Further, petitioners argue that Tax Law § 687(a) actually limits allowable refunds to the amount of tax paid within three years subsequent to the filing of the refund claim. Petitioners assert, therefore, that they have paid an amount of income tax to New York State subsequent to November 5, 1998 in excess of the amount of their 1994 refund claim. Petitioners also argue that if there is no time limit on paying a tax that is owed, the constitution prohibits a time limit on claiming a refund of an overpayment of tax.

The Division, in opposition, argues that the Administrative Law Judge correctly determined that petitioners' claim for refund was untimely and was properly denied by the Division.

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

Petitioners have not articulated any legal basis to support their position nor have they provided any evidence that would allow them to meet their burden of proof to show that the Division's denial of refund or the Administrative Law Judge's conclusion is incorrect. We reject petitioners' interpretation of Tax Law § 687(a) as contrary to the plain meaning of the statute. It is clear that if a refund claim is filed within the three-year period subsequent to the filing of the

tax return, section 687(a) restricts the allowable amount of a refund to the amount of tax paid for the year in issue (in this case, 1994) within three years preceding, not subsequent to, the date of the filing of the refund claim. As the Administrative Law Judge concluded, the Tax Law contains separate limitations for claiming refunds and issuing assessments and there is no constitutional requirement for symmetry between the two.

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 John E. and Mary K. Durkin is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of John E. and Mary K. Durkin is denied; and
4. The Division of Taxation's disallowance of petitioners' refund claim is sustained.

DATED: Troy, New York
October 25, 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