STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
WILLIAM M. AND JUDI L. WALLACE	:	DECISION DTA NO. 818025
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1990 through 1993.	:	

Petitioners William M. and Judi L. Wallace, 1357 East 65th Street, Brooklyn, New York 11234, filed an exception to the determination of the Administrative Law Judge issued on March 8, 2001. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Michelle M. Helm, Esq., of counsel).

Petitioners did not file a brief in support of their exception. The Division of Taxation filed a letter brief in opposition to the exception. Petitioners did not file a reply 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 Administrative Law Judge properly granted summary determination to the Division of Taxation denying petitioners' claim for refund for the years at issue.

FINDINGS OF FACT

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

Petitioners timely filed their New York State personal income tax returns and paid the tax due for each of the years at issue, i.e., they filed and paid the tax due for 1990 on or before April 15, 1991; they filed and paid the tax due for 1991 on or before April 15, 1992; they filed and paid the tax due for 1992 on or before April 15, 1993; and they filed and paid the tax due for 1993 on or before April 15, 1994.

On or about September 3, 1998, petitioners filed amended returns seeking refunds for the years 1990 through 1996 of New York State personal income tax paid on Internal Revenue Code § 414(h) retirement contributions for these years.

Petitioners received refunds for the years 1994 through 1996. However, on February 26, 1999, the Division of Taxation ("Division") issued a Notice of Disallowance to petitioners, relative to the years 1990 through 1993, which stated, in pertinent part, as follows: "New York State Tax Law does not permit us to allow the claim for refund. You should have filed your claim within three years from the date the return was due or two years from the date the tax was paid, whichever is later."

Petitioners admit that their claim for refund for the years 1990 through 1993 was filed beyond the statutory period set forth in Tax Law § 687 of the Tax Law.[1] However, in their response to the Division's motion for summary determination, petitioners allege that their claims

[1] In their response to the Division's motion, petitioners state that their claim for refund was filed in September 1999 when, in fact, such claim was filed in September 1998. Nevertheless, September 1998 was also beyond the statutory period as provided in Tax Law § 687(a).

for refund could not have been filed within the prescribed statutory period as set forth in Tax Law § 687 since ***Matter of Lonergan*** (Tax Appeals Tribunal, February 13, 1997) was not issued until February 1997. Since they were issued refunds for the years 1994 through 1996, petitioners maintain that this is evidence that the taxes for all of the years (1990 through 1996) were erroneously held by the Division. They therefore argue that the special refund authority provisions of Tax Law § 697(d) are applicable.

Petitioners claim that they filed their returns pursuant to instructions issued by the Division which provided that retirement contributions must be added back to Federal adjusted gross income to arrive at New York adjusted gross income. On their petition filed with the Division of Tax Appeals on September 6, 2000, petitioners allege that in 1998, the Division made a determination that the amount of Internal Revenue Code § 414(h) retirement contributions did not have to be added back to Federal adjusted gross income by Manhattan and Bronx Surface Transit Operating Authority ("MABSTOA") employees for tax years prior to 1997. As such, they argue that the moneys for the tax years at issue are being held by the Division under a mistake of facts and, accordingly, are properly the subject of the special refund authority provisions of Tax Law § 697(d).

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge recited that pursuant to Tax Law § 687, a claim for a credit or refund of an overpayment of income tax must be filed by the taxpayer within the later of three years from the time the return was filed or two years from the time the tax was paid. Petitioners' period of limitation for filing claims for refund for the years

1990 through 1993 had expired by September 3, 1998, the date on which petitioners filed their refund claims.

The Administrative Law Judge considered the applicability of the special refund authority of Tax Law § 697(d), which provides that where moneys have been erroneously or illegally collected from a taxpayer, or paid by a taxpayer under a mistake of facts, the Tax Commissioner has the discretion to refund such moneys without regard to any period of limitations. The Administrative Law Judge found that petitioners paid their taxes for the years 1990 through 1996 as was required by law at the time of the filing of the returns for each of these years and, as such, there was no erroneous or illegal collection of such moneys by the Division. Further, the Administrative Law Judge found that petitioners did not pay this money under a mistake of fact or law. Rather, petitioners properly paid taxes on the retirement contributions until 1997 when Chapter 312 of the Laws of 1997 amended the Tax Law to direct that the pensions of officers and employees of MABSTOA be subtracted from Federal adjusted gross income for purposes of New York State income tax. Accordingly, since the Administrative Law Judge found there to be no material and triable issue of fact, he granted summary determination to the Division.

ARGUMENTS ON EXCEPTION

On exception, petitioners assert that in its Answer, the Division admitted that contributions for MABSTOA employees made prior to 1997 were not taxable. Therefore, the instructions for Form IT-201 for 1990 through 1993 were not correct and taxes on such contributions were erroneously collected. Thus, petitioners claim that this should allow the Division to grant them a refund pursuant to the authority provided by Tax Law § 697(d).

The Division, in opposition, argues that the Administrative Law Judge correctly determined that petitioners' claim for refund was not filed prior to the expiration of the three-year statute of limitations provided by Tax Law § 687 for the years at issue herein. Further, the Division states that petitioners are not entitled to a refund pursuant to the special refund authority of Tax Law § 697(d) because the moneys were not erroneously or illegally collected nor were the payments made under a mistake of fact but were made pursuant to law.

OPINION

Petitioners argue that the Division erroneously required MABSTOA employee retirement contributions to be taxed prior to the enactment of Chapter 312 of the Laws of 1997. Petitioners are mistaken.

Among the amendments enacted by Chapter 312 was a new paragraph 26-a which was added to section 612 of the Tax Law which provided that, in determining New York adjusted gross income, there shall be added to Federal adjusted gross income:

> The amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under section 414(h) of the Internal Revenue Code.

For the years at issue herein, however, Tax Law § 612(b)(26) provided that Federal adjusted gross income was to include member or employee contributions to a retirement system or pension fund picked up or paid by the employer pursuant to certain sections of the New York Retirement and Social Security Law, Administrative Code of the City of New York or Education Law. No specific reference to members of the MABSTOA pension plan was contained in Tax

Law § 612(b)(26) nor did the enumerated sections of law set forth in section 612(b)(26) refer to MABSTOA pension plan members.

In ***Matter of Jackson*** (Tax Appeals Tribunal, March 5, 1998), we stated that the purpose of the statutory amendments made by Chapter 312 of the Laws of 1997 was to allow pensioners of the MABSTOA Pension Fund to deduct pension payments received from such fund from Federal adjusted gross income for the purpose of computing New York State income taxes. Chapter 312 of the Laws of 1997 was approved on July 29, 1997; section 11 of Chapter 312 provided that "[t]his act shall take effect immediately and shall apply to contributions to, and distributions from, the Manhattan and Bronx surface transportation authority pension plan made in taxable years beginning on or after January 1, 1997 . . . ."

In ***Matter of Jackson*** (***supra***), we considered whether petitioner had properly subtracted his MABSTOA pension income from his 1991, 1992 and 1994 Federal adjusted gross income pursuant to the subtraction modification provided in Tax Law § 612(c)(3)(i). We noted that:

> [I]n 1997, the Legislature amended (L 1997, ch 312) PAL (§§ 1203-a[b] and 1215), the Tax Law (§ 612, in particular), the Administrative Code of the City of New York, the General City Law and the codes and ordinances of the City of Yonkers to *clarify* the status of employees of MABSTOA as employees of a subdivision of New York State for the purposes of Tax Law § 612(c)(3)(i) (emphasis in original).
>
> Although one could argue that the bill and its legislative history, because of the bill's clarifying nature, support a retroactive application, it remains that the power to interpret laws is vested in the courts, not the Legislature, particularly with regard to questions of interpretation pending in the courts (McKinney's Cons Laws of NY, Book 1, Statutes § 75[a]).
>
> It is a general rule of statutory construction that there is a presumption that statutes operate prospectively and not retroactively

> (McKinney's Cons Laws of NY, Book 1, Statutes § 51[c]). The statute in issue sets forth an "immediate" effective date, which has been held to mean it can have no retroactive operation or effect (McKinney's Cons Laws of NY, Book 1, Statutes § 51[b]) and specifically applies to pension contributions and distributions made on or after January 1, 1997. We believe that the amendment to PAL § 1203-a, which drives the extension of the pension exemption in Tax Law § 612(c)(3)(i), is not retroactive and we do not rely on its application as a basis for our decision herein.
>
> It is our conclusion that, given the discussion above, the law in effect during the periods in issue support a finding that petitioner, as a MABSTOA employee, was an employee of the State, or one of its subdivisions or agencies, thereby satisfying the requirements of Tax Law § 612(c)(3)(i) and entitling petitioner to the pension exemption.

Although this Tribunal decided in ***Matter of Jackson*** (***supra***) that MABSTOA employees were employees of the State, or one of its subdivisions or agencies independent of the provisions of Chapter 312, neither ***Jackson*** nor Chapter 312 addresses the issue of whether MABSTOA employees such as petitioner were required to include their pre-retirement contributions made prior to 1997 as part of their New York taxable income as were other employees of the State, its subdivisions and agencies at that time (***see***, Tax Law § 612[b][26]).

Petitioners allege and the Division admits that petitioners filed their personal income tax returns according to instructions issued by the Commissioner of Taxation and Finance, which instructions provided that a Tier III member of the New York State and Local Retirement System must add back the amount of his 414(h) retirement contributions to taxable income. Petitioners further allege and the Division admits that the Division determined that 414(h) retirement contributions were not taxable for MABSTOA employees for tax years prior to 1997. Petitioners do not allege nor does the Division admit that at any time prior to 1997, MABSTOA employees

were required to include 414(h) retirement contributions as part of their taxable income nor did the Division instruct MABSTOA employees to do so.

Tax Law § 697(d) provides as follows:

> Special refund authority. - - Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller.

Here, petitioners have failed to show that they paid tax on their employee retirement contributions for the years at issue under a mistake of fact. A mistake of fact has been defined as an understanding of the facts in a manner different that they actually are (54 Am Jur 2d Mistake, Accident or Surprise § 4; ***see also***, ***Wendel Foundation v. Moredall Realty Corp***., 176 Misc 1006, 29 NYS2d 451). A mistake of law, on the other hand, has been defined as acquaintance with the existence or nonexistence of facts, but ignorance of the legal consequences following from the facts (54 Am Jur 2d Mistake, Accident or Surprise § 8; ***see also, Wendel Foundation v. Moredall Realty Corp.***, ***supra***). Petitioners knowingly, albeit mistakenly, reported MABSTOA retirement contributions as taxable New York State income for the years at issue. Petitioners' assumption that they were required to include such contributions as New York State taxable income was a mistake of law and not of fact.

We disagree with the Administrative Law Judge's analysis that for the years at issue, petitioners "paid their taxes for the years 1990 through 1996 *as was required by law* at the time of the filing of the returns for each of these years" (Determination, conclusion of law "C,"

emphasis added). Rather, for these years, petitioners paid taxes for the years at issue on their retirement contributions under a mistake of law. As a result, the special refund authority provisions of Tax Law § 697(d) are not applicable herein, and we agree with the Administrative Law Judge that the statute of limitations for filing claims for refund for the years 1990 through 1993 had expired by the date on which petitioners filed their refund claims. Therefore, no material and triable issue of fact remains and the Division is entitled to summary determination in its favor.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of William M. and Judi L. Wallace is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of William M. and Judi L. Wallace is denied; and

4. The Notice of Disallowance, dated February 26, 1999, disallowing petitioners' refund claims for the years 1990 through 1993 is sustained.

DATED: Troy, New York
October 11, 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