

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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|--|---|----------------|
| In the Matter of the Petition                        | : |                |
| of   | : |                |
| <b>STEPHEN CHARLES INSALACO, SR.</b>                 | : | DECISION       |
|  | : | DTA NO. 818892 |
| for Redetermination of a Deficiency or for Refund of | : |                |
| New York State Personal Income Tax under Article 22  | : |                |
| of the Tax Law for the Years 1992 through 1996.      | : |                |

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Petitioner Stephen Charles Insalaco, Sr., 44 Wood Cutters Circle, Rochester, New York 14612-2267, filed an exception to the determination of the Administrative Law Judge issued on February 13, 2003. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Justine Clarke Caplan, Esq., of counsel).

Petitioner filed a brief in support of his exception and the Division of Taxation filed a letter in lieu of a formal brief. Petitioner filed a reply brief. Petitioner did not request oral argument.

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 claims for refund for the years 1992 through 1996 on the basis that such claims were not filed within the requisite period of limitations and, therefore, were untimely.

***FINDINGS OF FACT***

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

Petitioner, Stephen Charles Insalaco, Sr., retired, due to physical disabilities, from his employment with the Eastman Kodak Company on June 1, 1986, and has received a pension from Eastman Kodak from such time through the present.

Petitioner was born on July 9, 1932, and thus had reached the age of 59½ on January 9, 1992. Petitioner filed a timely New York State Resident Income Tax Return (“Form IT-201”) for each of the years 1992 through 1996.

On April 13, 2001, petitioner filed an amended New York State Resident Income Tax Return (“Form IT-201-X”) for each of the years 1992 through 1996, claiming refunds of tax as follows:

| YEAR  | AMOUNT OF REFUND CLAIMED |
|-------|--------------------------|
| 1992  | \$ 473.00                |
| 1993  | \$ 510.00                |
| 1994  | \$ 562.00                |
| 1995  | \$ 678.00                |
| 1996  | \$ 776.00                |
| TOTAL | \$2,999.00               |

The basis for petitioner’s claims is that, for each of the noted years, petitioner received pension income based on his employment with Eastman Kodak Company and erroneously included the same as subject to New York State personal income tax. Specifically, in calculating his New York adjusted gross income for each of the years, petitioner failed to reduce his federal

adjusted gross income (which correctly included the pension income) by the New York subtraction adjustment which allows for exclusion of pension and annuity income of up to \$20,000.00 per year. In addition, but only with respect to the year 1993, in calculating his New York adjusted gross income, petitioner failed to reduce his federal adjusted gross income (which correctly included federally taxable social security benefits in the amount of \$228.70) by the New York subtraction adjustment which excludes such benefits. Petitioner's amended returns for the years 1992 through 1996 reflect these subtraction adjustments which result in the claimed refunds.

By a letter dated May 4, 2001, the Division of Taxation ("Division") denied petitioner's claims for refund on the basis that such claims (made via the amended returns) had not been filed within the period of limitations for filing such claims. The Division's letter noted further that amended returns had been filed seeking refunds on the same basis for the ensuing years 1997 through 1999, and that such returns would be reviewed and any applicable overpayments of tax would be refunded to petitioner.

Petitioner challenged the refund denial by filing a request for a conciliation conference with the Division's Bureau of Conciliation and Mediation Services. A conciliation conference was held and, by a Conciliation Order (CMS No. 186908) dated November 30, 2001, the denial of petitioner's claims for refund was sustained. Petitioner continued his challenge by filing a petition with the Division of Tax Appeals.

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

In his determination, the Administrative Law Judge noted that pursuant to Tax Law § 687(a), taxpayers who wish to claim a refund of an overpayment of New York State income tax must file a claim 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 later. The Administrative Law Judge observed that there was no dispute that petitioner's amended returns for the years 1992 through 1996, on which the requested refunds were made, were filed on April 13, 2001. Therefore, the Administrative Law Judge concluded that the date on which the claim for refund was filed fell beyond the allowable time period for filing such a claim and the Division's denial of petitioner's refund claims as untimely was proper and must be sustained.

The Administrative Law Judge rejected petitioner's claims that the period of limitations should not bar his claims because the format of the State income tax return misled him, primarily in that it did not have a specific reminder on its face stating that the pension income exclusion provided within Tax Law § 612(c)(3-a) was available to taxpayers who had reached the age of 59½. The Administrative Law Judge noted that New York State's income tax refund procedures and, specifically, the three-year time limitation period within which a claim for refund must be made, have been consistently recognized as constitutionally sound. The Administrative Law Judge stated that as petitioner failed to file his claims for refund within the applicable period, there was no basis in law to extend such period, including non-statutory exceptions based on individual circumstances such as mental incompetence or disability.

The Administrative Law Judge also rejected petitioner's arguments that the tax return form was unclear and misleading. The Administrative Law Judge stated that the alleged shortcoming

in the tax return form does not provide a basis to revive claims for refund which are barred by the period of limitations specified in law. The Administrative Law Judge noted that:

“[i]t is not reasonable to hold the Division to a standard that a tax return, by itself, must be designed in such a manner that a taxpayer is alerted to every single facet of the Tax Law. The instruction booklet, in a basic sense, is designed for this purpose and it is not unreasonable to expect a taxpayer who chooses to prepare his own returns to carefully read it” (Determination, conclusion of law “F”).

The Administrative Law Judge also rejected petitioner’s reliance on Internal Revenue Code (“IRC”) § 6511(h), which provides for a suspension of the federal statute of limitations period for filing a claim for credit or refund of federal income tax under IRC § 6511(a) for any period of an individual taxpayer’s life during which the taxpayer is unable to manage his or her financial affairs because of a medically determinable mental or physical impairment that can be expected to result in death, or has lasted for a continuous period of not less than 12 months. The Administrative Law Judge noted that the federal statute has no applicability to New York State statutes of limitations with respect to petitioner’s refund claims nor is there a parallel New York provision which provides for such an extension suspending the period of limitations. Further, the Administrative Law Judge stated that petitioner did not file any amended federal return for any of the years in issue. Finally, the Administrative Law Judge observed that a federal suspension of the period of limitations on credits or refunds pursuant to IRC § 6511(h) requires the submission of proof that the taxpayer is “physically or mentally unable to manage [his or her] financial affairs” and no such evidence had been presented by petitioner herein.

### ***ARGUMENTS ON EXCEPTION***

On exception, petitioner presents essentially the same arguments that he made before the Administrative Law Judge. Petitioner maintains that he failed to claim the pension and annuity

exclusion on his original returns because the format of the New York income tax returns was poorly designed and is misleading. Petitioner complains that the form does not specifically alert taxpayers to the applicability of the exclusion. Petitioner also argues that it was the responsibility of the Tax Department to discover his error in failing to claim the subtraction modification, and the Department should have corrected the same. Petitioner asserts that he is disabled as the result of heart ailments, surgeries and strokes, and that the statute of limitations on filing a claim for refund should be extended or tolled based upon his disability.

### ***OPINION***

Petitioner has presented the same arguments on exception that were considered and rejected by the Administrative Law Judge. Petitioner has offered no evidence below, and no argument on exception, that demonstrates that the Administrative Law Judge's determination is incorrect. 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 Stephen Charles Insalaco, Sr. is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Stephen Charles Insalaco, Sr. is denied; and

4. The denial of petitioner's claims for refund for the years 1992 through 1996, dated May 4, 2001, is sustained.

DATED: Troy, New York  
November 13, 2003

/s/Donald C. DeWitt

Donald C. DeWitt  
President

/s/Carroll R. Jenkins

Carroll R. Jenkins  
Commissioner