

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

---

In the Matter of the Petition	:	
of	:	
<b>DON C. AND LINDA J. GOODSPEED</b>	:	DECISION
		DTA NO. 821828
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 2000.	:	

---

Petitioners, Don C. and Linda J. Goodspeed, filed an exception to the determination issued by the Administrative Law Judge on April 24, 2008. Petitioners appeared by Joseph A. Maria, P.C. (Joseph A. Maria, Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (Kevin A. Law, Esq., of counsel).

Petitioners did not file a brief in support of their exception. The Division of Taxation filed a letter in lieu of 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 credit or refund of personal income tax for the year 2000 on the basis that the claim was filed after the expiration of the applicable statute of limitations.

### ***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge except for finding of fact "1" which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

We modify finding of fact "1" to read as follows:

On April 14, 2000, petitioners, Don C. and Linda J. Goodspeed, sold real property located on Mountain Street in Camden, Maine, for a total consideration of \$240,000.00. At the time of the transfer, \$7,250.00, was withheld from this sale by the withholding agent (buyer or other transferee), and forwarded to Maine Revenue Services, Income/Estate Tax Division, along with a Form REW-1, Maine Real Estate Withholding Return for Transfer of Real Property (Maine real estate withholding return), which identified petitioners as the sellers subject to withholding.<sup>1</sup>

Petitioners timely filed a New York State resident income tax return for the year 2000 on or about November 29, 2001. On their return, they reported New York adjusted gross income of \$249,527.00 and taxable income of \$229,769.00. They calculated New York State tax due in the amount of \$15,739.00, reported remitting a New York State estimated tax payment of \$18,000.00 with their form IT-370, Application for Automatic Extension of Time to File for Individuals, and requested a refund in the amount of \$2,261.00 on their return for 2000. A refund in the amount of \$2,255.00 was computed and paid by the Division of Taxation (the Division) for the year 2000 on or about December 21, 2001.

Shortly before May 6, 2005, petitioners received a request for filing notice, regarding the transfer of the real property located on Mountain Street, Camden, Maine, from Maine Revenue Services. In response to petitioners' message left on her voice mail, Phoebe DiPetro, a Management Analyst I in the Maine Revenue Services' Tax Compliance Unit, sent a letter, dated

---

<sup>1</sup>We have modified finding of fact "1" to more accurately reflect the record.

May 6, 2005, advising petitioners that they were required to file a Maine income tax return for the year 2000 because they were nonresidents who had a recognized gain relating to the sale of Maine property in that year. The letter further advised petitioners that the payment withheld at the time of the sale was an estimated payment for any tax liability they may have, not a determination of tax due. For petitioners' convenience, Ms. DiPietro enclosed the 2000 Maine Individual Income Tax Booklet for nonresident/part year resident.

On June 29, 2005, Maine Revenue Services sent a notice demanding that petitioners file a Maine income tax return for the year 2000 within 30 days from the date of receipt of the notice. Petitioners filed their Maine income tax return including the nonresident and part-year resident schedule for the year 2000 on or about July 25, 2005. On their Maine tax return, petitioners reported net tax, after a nonresident credit, of \$13,767.00 less the real estate withholding tax payment of \$7,250.00, for tax due in the amount of \$6,517.00. Maine Revenue Services issued a Billing Notice to petitioners stating its final determination of tax due in the amount of \$14,184.00 for the year 2000, and interest, penalties and costs totaling \$5,402.25 on August 13, 2006.

On or about August 2, 2005, petitioners filed an amended 2000 New York State resident income tax return. On this amended return, petitioners claimed a credit for income taxes subsequently paid to the State of Maine on the gain from the 2000 sale of real property located in Camden, Maine, and requested a refund of \$10,879.00. In the letter accompanying petitioners' amended return, Mr. Goodspeed stated that he called the Division's tax telephone center and was informed that he would not be able to claim the double tax paid to two different states on the sale of the Maine property because the three-year statute of limitations for filing an amended return had expired. Mr. Goodspeed also maintained, in his letter, that he paid his tax in good faith to what he believed was the proper tax authority, he had no idea until May 2005 that he should have

paid Maine instead of New York State, and as such he found the Division's taxing position to be unfair and a grave financial hardship on him.

On February 24, 2006, the Division issued a Notice of Disallowance to petitioners that 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."

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

Since there were no triable issues of fact in this case, the Administrative Law Judge appropriately dealt with the resolution of the issue based upon a motion for summary determination made by the Division.

The Administrative Law Judge concluded that petitioners' claim for refund was untimely, as such claim was not made within the statutory time frame set forth in Tax Law § 687(a). Moreover, the Administrative Law Judge rejected petitioners' argument that they should be entitled to relief pursuant to the special refund authority outlined pursuant to Tax Law § 697(d).

In order to qualify for relief under the special refund provision, the Administrative Law Judge reasoned that petitioners needed to establish that they paid money erroneously under a mistake of facts. The Administrative Law Judge noted that petitioners mistakenly failed to file a Maine nonresident income tax return reporting their recognized gain on the sale of their Camden, Maine property and, in turn, included such income on their New York State income tax return on which they paid New York State income tax. The Administrative Law Judge explained that petitioners were not operating under a mistake of fact but rather due to a misunderstanding of which jurisdiction was entitled to receive the income tax on the gain arising from the transaction. Under the circumstances, petitioners erroneously reported the income to New York rather than to

the state of Maine. Since the proper reporting was discovered by petitioners too late to file a claim for refund, the Administrative Law Judge determined that petitioners are not entitled to receive a credit for the taxes paid to Maine under New York law.

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

In their exception, petitioners do not dispute that their claim for refund was untimely. Petitioners take issue with the application of the special refund authority and that, in essence, under the circumstances, it is equitable to provide a credit or refund since petitioners paid a double tax on the sale of the Maine real property.

The Division argues that the Administrative Law Judge properly determined the case before her. The Division states that petitioners have not demonstrated that their overpayment of income tax to New York was based upon a mistake of facts, but rather it was a result of petitioners' ignorance of the law. Furthermore, the Division points out that the statute of limitations must be strictly adhered to and cannot be disregarded.

### ***OPINION***

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.

As discussed by the Administrative Law Judge in her determination, a mistake of fact has been defined as an understanding of the facts in a manner different than they actually are (54 Am Jur 2d Mistake, Accident or Surprise § 4; *see also, Wendel Found. v. Moredall Realty Corp.*,

176 Misc 1006 [Sup Ct, New York County 1941]). Whereas, a mistake of law 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 Found. v. Moredall Realty Corp., supra*). In this case, it is clear that petitioners were mistaken about which jurisdiction was entitled to tax the gain recognized by them on their sale of the Maine property. Clearly, such mistake was based on their erroneous interpretation of the law and not on any fact underlying the transaction. Thus, as they filed their return based upon a mistake of law, the special refund provision does not apply herein.

With respect to petitioners' equitable argument, they have not provided us with any guidance, in either statute or case law, that would establish a basis for granting equitable relief to them. Therefore, we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Don C. and Linda J. Goodspeed is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Don C. and Linda J. Goodspeed is denied; and
4. The Notice of Disallowance, dated February 24, 2006, is sustained.

DATED:Troy, New York  
January 29, 2009

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
President

/s/ Carroll R. Jenkins  
Carroll R. Jenkins  
Commissioner

/s/ Robert J. McDermott  
Robert J. McDermott  
Commissioner