

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>EDMUND J. RENAUD D/B/A</b>	:	
<b>BEVERAGE &amp; REDEMPTION CENTER</b>	:	DECISION
	:	DTA NO. 823595
for Revision of a Determination or for Refund of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for	:	
the Years 1994 through 1997.	:	

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Petitioner, Edmund J. Renaud d/b/a Beverage & Redemption Center, filed an exception to the determination of the Administrative Law Judge issued on February 10, 2011. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark Volk, Esq. (Lori P. Antolick, Esq., of counsel).

Neither party filed a brief. Petitioner's request for oral argument was denied.

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

***ISSUE***

Whether petitioner's request for a refund of sales and use taxes paid for the period in issue was timely.

***FINDINGS OF FACT***

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

Petitioner, Edmund J. Renaud d/b/a Beverage & Redemption Center, was audited by the

Division of Taxation for the period June 1, 1994 through August 31, 1997,<sup>1</sup> which audit determined that petitioner owed additional sales and use taxes in sum of \$126,585.98.

Subsequently, a Notice of Determination, Notice number L-021328594, was issued to petitioner asserting the additional tax found due plus penalty and interest.

Ultimately, a stipulation of discontinuance with respect to Notice number L-021328594 was executed on or about July 27, 2004. The stipulation recited that the agreed upon tax was the reduced amount of \$114,481.22 plus penalty and interest.

During the course of the audit, the matter was referred to the Division of Taxation's Revenue Crimes Bureau for investigation. The investigation resulted in criminal charges against petitioner. Petitioner pled guilty to grand larceny in the fourth degree and received a sentence of five years probation and was ordered by the Cattaraugus County Court to pay restitution to the Division in the sum of \$78,287.57. This amount represented the portion of the restitution allocated to Beverage & Redemption Center. Pursuant to the terms of the sentence, explained in the October 9, 2001 letter from Mr. Gerald Vella, petitioner's attorney, to petitioner, Mr. Renaud was required to pay one half of the restitution on October 10, 2001, the date he entered his plea in Cattaraugus County Court, and the remainder on or about October 31, 2001, the latter payment memorialized in a letter from Mr. Vella to the Attorney General bearing the same date.

The Division received the final portion of the payment of \$78,287.57 in October 2001 and subsequently applied it to the balance due on Notice number L-021328594.

On or about January 30, 2009, petitioner filed a claim for refund in the sum of \$78,287.57, which petitioner claimed covered the period 1994 to 1997, or the period covering the sales tax

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<sup>1</sup> In fact, petitioner's last sales and use tax return for Beverage & Redemption Center, for the quarter ended May 31, 1997, was filed in June 1999.

audit of Beverage & Redemption Center.

By letter dated May 6, 2009, the Division of Taxation denied the claim for refund in full.

The Division stated:

The Sales and Use Tax Law requires that a refund application be filed within three years from the date the taxes are payable to the Tax Department. Sales tax is deemed to be payable on the 20<sup>th</sup> day of the month following the quarter in which the sale/purchase was made.

Your claim was filed on 01/30/09. Based on the three year statute of limitations, your claim can only include periods beginning on 12/01/05. All taxes paid on sales/purchases made before that date cannot be recommended for approval.

On or about November 13, 2009, the Division of Taxation sent petitioner a Response to Taxpayer inquiry that informed him that it could not verify the payment of \$364,623.36 on Notice number L-021328594 as petitioner had claimed. The Division of Taxation requested a photocopy of the canceled check as proof of payment.

Petitioner timely filed a request for a conciliation conference in the Bureau of Conciliation and Mediation Services, after which an order, dated January 22, 2010, was issued sustaining the denial of refund.

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

In his determination, the Administrative Law Judge noted that a motion for summary determination may be granted if it has been sufficiently established that no material and triable issue of fact is presented and that the Administrative Law Judge can, as a matter of law, issue a determination in favor of any party. The Administrative Law Judge determined that, since petitioner did not respond or contest any of the facts set forth in the Division's motion, there was no questions of fact requiring a hearing. Thus, he concluded that summary determination could be granted.

The Administrative Law Judge concluded that petitioner's claim for refund was untimely, as such claim was not made within the statutory time frame set forth in Tax Law § § 1139(a) or 1139(c). Therefore, the Administrative Law Judge granted the Division's motion for summary determination.

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

On exception, petitioner does not dispute that his claim for refund was untimely. Rather, petitioner argues that he had no tax liabilities and that final sales tax was paid in June of 1999.

### ***OPINION***

Tax Law § 1139(a) states that a refund or credit of any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid shall be made:

if application therefor shall be filed with the tax commission . . . in the case of a tax, penalty or interest paid by the applicant to the tax commission . . . [ii] in the case of a tax, penalty or interest paid by the applicant to the tax commission, within three years after the date when such amount was payable under this article . . . .

Tax Law § 1139(c) provides in pertinent parts as follows:

Claim for credit or refund of an overpayment of sales 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, or if no return was filed, within two years from the time the tax was paid.

In the present matter, the return for the quarter ended August 31, 1997, the last month audited, was due by September 20, 1997 (Tax Law § 1136[b]). The latest date on which the tax, penalty and statutory interest became payable was at the time the returns were due. Petitioner's claim for refund was filed on January 30, 2009. Under either section of the Tax Law cited above, petitioner's refund claim was untimely. As petitioner's sales tax return was filed in June of 1999 and his refund claim was filed on January 30, 2009, he clearly does not meet the requirement that

the refund claim be filed within three years from the date the return was filed, as set forth in Tax Law § 1139(c). Similarly, petitioner does not meet the requirement that the refund claim be filed within three years after the date when such amount was payable (September 20, 1997). Petitioner also does not meet the two year requirement of Tax Law § 1139(c) because the refund claim was not made within two years of the time that the tax was paid (October 31, 2001). Accordingly, we affirm the Administrative Law Judge's determination.

The statute of limitations here is clearly set forth in the Tax Law. Its purpose is to allow a reasonable time for taxpayers who have erroneously filed or paid taxes to realize their error and make an application for refund. The State is thus put on notice that there is a specific statutory period during which it may be liable for such claims. At the end of the period, the matter is settled. Anything less than this degree of certainty would make the financial operation of government difficult, if not impossible. In short, the statute of limitations at issue here is a balance between the needs of the State with regard to the protection of its financial resources and the rights of taxpayers to correct their errors.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Edmund J. Renaud d/b/a Beverage & Redemption Center is denied;
2. The determination of the Administrative Law Judge is affirmed; and
3. The petition of Edmund J. Renaud d/b/a Beverage & Redemption Center is dismissed.

DATED: Troy, New York  
October 13, 2011

/s/ James H. Tully, Jr.  
James H. Tully, Jr.  
President

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
Commissioner