

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>REUBEN AND RUTH SPIEGEL</b>	:	DETERMINATION
	:	DTA NO. 814498
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law for	:	
the Year 1986.	:	

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Petitioners, Reuben and Ruth Spiegel, 406 Belfast Lane, Ridge, New York 11961-2045, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1986.

On October 15, 1996 and October 23, 1996, respectively, petitioner Reuben Spiegel, and the Division of Taxation, by Steven U. Teitelbaum, Esq. (Herbert M. Friedman, Jr. Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by February 18, 1997, which date commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Frank W. Barrie Administrative Law Judge renders the following determination.

***ISSUE***

Whether petitioners are entitled to a refund of personal income tax paid on Federal pension income, when their refund claim was not filed within three years of the filing of their tax return for the year at issue.

***FINDINGS OF FACT***

1. In 1986, petitioner Reuben Spiegel received income from a Federal pension in the amount of \$25,032.00. Petitioners timely filed a New York State income tax return for 1986 on which they subtracted a pension exclusion of \$20,000.00 from Mr. Spiegel's Federal pension in calculating New York income subject to tax.

2. It was not until August 24, 1994 that petitioners filed a refund claim for 1986 although they had filed refund claims for 1987 and 1988 more than four years earlier, on June 15, 1990. Petitioners did not respond to the evidence introduced into the record by the Division of Taxation ("Division"), and it is unknown why petitioners failed to file a refund claim for 1986 when they filed refund claims for 1987 and 1988.

3. The Division issued a Notice of Disallowance in October 1994 in response to petitioners' claim for refund for 1986 on the basis that their claim was not timely filed pursuant to Tax Law § 687 because it was not filed by April 15, 1990, three years from the date the 1986 return was filed. In addition, the Division noted that in 1986:

"New York State provided a \$20,000.00 pension and annuity income exclusion for those taxpayers who received their pension [in periodic payments] and were 59-1/2 years or age or older. Thus, if the exclusion equalled or exceeded your pension income, no tax would have been paid on your pension and no refund would be due."

### ***CONCLUSIONS OF LAW***

A. The issue of whether the statute of limitations for maintaining a refund claim bars a taxpayer from seeking a refund of New York income tax paid on Federal pension income has been resolved recently by the Tax Appeals Tribunal. The Tribunal in Matter of Burkhardt (January 9, 1997) held that a Federal retiree who failed to file a timely claim for refund within the three-year statute of limitations for refund claims under Tax Law § 687 was not entitled to a refund of income tax paid on Federal pension income. The Tribunal observed:

"Tax Law § 683 provides for a general three-year period for the Division to issue an assessment to a taxpayer. Accordingly, we see no inequity in the current statutory scheme which limits a taxpayer to the same three-year period for the filing of a claim for refund" (Matter of Burkhardt, supra).

B. The Tax Appeals Tribunal in Matter of Jones (January 9, 1997), issued simultaneously with its decision in Burkhardt (supra), further noted that New York's income tax refund procedure was a "constitutionally sound scheme which 'rectified any unconstitutional deprivation' (Harper v. Virginia Dept. of Taxation, 509 US 86, 125 L Ed 2d 74) while simultaneously respecting the State's fisc (McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 496 US 18, 110 L Ed 2d 17)."

C. Accordingly, in light of petitioners' failure to file their refund claim within three years of the filing of their 1986 tax return, their petition is properly denied. It is observed that even if petitioners had filed their refund claim for 1986 along with their refund claims for 1987 and 1988 on June 15, 1990, their refund claim for 1986 would have still been filed two months late.

D. The petition of Reuben and Ruth Spiegel is denied, and the Division's disallowance of petitioners' claim for refund for 1986 is sustained.

DATED: Troy, New York  
May 22, 1997

/s/ Frank W. Barrie  
ADMINISTRATIVE LAW JUDGE