STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
HOWARD J. AND DELORES J. WALTER	:	DETERMINATION DTA NO. 814937
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Years 1986, 1987 and 1988.	:	

Petitioners, Howard J. Walter and Dolores J. Walter, 205 Deerpath Lane, Hendersonville, North Carolina 28739-7901, filed a petition for refund of personal income tax under Article 22 of the Tax Law for the years 1986, 1987 and 1988.

The Division of Taxation, by its representative, Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel) brought a motion for summary determination pursuant to section 3000.9(b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioners, by their representative Caroline G. Trinkley, Esq., filed a response to the motion before the August 30, 1996 response date which date began the 90-day period for issuance of this determination. After due consideration of the pleadings, motion papers and exhibits, Jean Corigliano, Administrative Law Judge, renders the following determination.

ISSUES

I. Whether, because of the oral and written statements of its employees, the Division of Taxation should be estopped from asserting the statute of limitations of Tax Law § 687(a) as a bar to petitioners' refund claims.

II. Whether petitioners' claim for refund of personal income taxes paid for the years 1986, 1987 and 1988 should be granted pursuant to the special refund authority found in Tax Law § 697(d).

FINDINGS OF FACT

1. Petitioners, Howard J. Walter and Dolores J. Walter, filed a petition seeking a review of a denial of claims for refund of New York State personal income taxes for the years 1986, 1987 and 1988. The Division of Taxation ("Division") issued a Notice of Disallowance, dated October 24, 1994, denying those refunds on the ground that the refund claims were not filed within the period of limitation set forth at Tax Law § 687(a).

2. Petitioners timely filed New York State personal income tax returns for the years in issue. Petitioners filed their 1986 personal income tax return on or before April 15, 1987, filed their 1987 personal income tax return on or before April 15, 1988 and filed their 1988 personal income tax return on or before April 15, 1989.

3. Petitioners filed a Claim for Credit or Refund of Personal Income Tax (form IT-113X) which was received by the Division on April 18, 1989. In a block on the form next to the statement: "Claim for calendar year or fiscal year ending", petitioners entered "Dec 31, 1985". On the same form, petitioners responded "No" to the question: "Did you file claims for any other year?"

4. The basis for petitioners' refund claims is the United States Supreme Court decision in Davis v. Michigan Dept. of Treasury (489 US 803, 103 L Ed 2d 891) which invalidated a Michigan statute exempting state pensions but not Federal pensions from income tax. The Court decided the Davis case on March 28, 1989. Shortly thereafter, many Federal pensioners filed claims for refund of New York State income taxes paid on Federal pensions. Following the Davis decision, the New York State Legislature amended the Tax Law to exclude Federal pensions, as well as New York State pensions, from taxation; however, the amended law applies only to Federal pensions received in taxable years beginning on or after January 31, 1989 (L 1989, ch 664, §§ 1, 2, effective July 21, 1989).

5. By their petition, petitioners allege the following:

> "3. That Petitioner, Howard J. Walter, called the New York State Department of Taxation and Finance (NYSDTF) in the Fall of 1988 and inquired into the procedure he should follow to obtain a refund for the years 1985, 1986 and 1987.

"4. That Petitioner, Howard J. Walter, was advised by an employee of the aforesaid NYSDTF that he only needed to file one refund form for the previous three (3) years."

Petitioners further allege that they filed their New York State Income Tax return for 1988 in March of 1989 under protest (Petition, ¶ 6).

6. By letter dated December 8, 1989, the Division denied petitioners' claim for refund for 1985. In that letter, the Division stated its position that the Davis decision did not apply retroactively to cover tax years beginning before the issuance of that decision. In addition, the Division noted that it had no authority under New York State law to issue refunds for taxes paid on Federal pension benefits for the years prior to the change in the Tax Law, before January 1, 1989. The letter states: "Your claim has been disallowed as New York State will not issue refunds for taxes paid on federal pension benefits for years prior to 1989."

The Division informed petitioners of their right to protest the Division's determination by filing a petition with the Division of Tax Appeals. The time for filing such a petition was said to be two years from the date of the letter, but the Division stated that if pending litigation changed the Division's position "your claim will be automatically reconsidered." The Division's letter refers specifically to tax year 1985 and to no other tax year.

7. Petitioners took no further action after receiving the Division's letter of December 8, 1989. They allege that they wrongly believed that "only one refund form was required" to obtain a refund for the tax years 1985 through 1988 and that their belief was based on misinformation provided to them by a Division employee.

8. On or about June 28, 1994, the Division issued a letter to petitioners under the signature of James W. Wetzler, Commissioner of Taxation and Finance. In that letter, Commissioner Wetzler stated that New York State had decided to approve refund claims rather than wait for further judicial action. He explained that in petitioners' case it was not possible for the Division to determine the exact amount of refund which might be due. Petitioners were asked to provide the Division with copies of Form W-2P, showing their original Federal pension income, and copies of their Federal and state tax returns for the years for which refunds

were sought. On August 17, 1994, petitioners claimed refunds for 1986, 1987 and 1988 by filing amended returns for those years.

9. The Division issued a Notice of Disallowance to petitioners for tax years 1986, 1987 and 1988, dated October 24, 1994. The Division explained that the claim for those years was denied because it was not filed within three years of the time the returns for those years were filed.

10. The Division refunded tax paid by petitioners for the 1985 tax year in the amount of $1,708.00.

11. The Division takes the position that petitioners' claims for refund for 1986, 1987 and 1988 are barred by the three-year period of limitation provided for in Tax Law § 687(a) which states, as relevant:

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

12. Petitioners state that they "are in agreement with the NYSDTF that there are no material and/or triable issues of fact in this matter." (Petitioners' Answer to Motion for Summary Determination, ¶ 13.)

CONCLUSIONS OF LAW

A. To obtain summary determination, the moving party must submit an affidavit, made by a person having knowledge of the facts, a copy of the pleadings and other available proof. The documents must show that there is no material issue of fact and that the facts mandate a determination in the moving party's favor (20 NYCRR 3000.9[b][1]). Petitioners and the Division agree that there are no material issues of fact in dispute in this proceeding; therefore, a determination may be issued, as a matter of law, in favor of any party.

B. Before addressing petitioners' arguments, I will briefly summarize the history surrounding New York State's taxation of Federal pension benefits. When petitioners filed personal income tax returns for the years 1985 through 1989, New York State's Tax Law required taxpayers to include Federal pension benefits in their calculation of New York State

taxable income. Tax Law § 612(c)(former [3]) allowed state pensioners to exclude their pension income from the calculation of New York adjusted gross income, but there was no equivalent provision that allowed Federal pensioners to exclude their pension benefits from tax. At that time, approximately 24 states had tax or pension statutes which exempted state pensions but not Federal pensions from income tax (see, Duffy v. Wetzler, 148 Misc 2d 459, 555 NYS2d 543, 544, affd as mod, 174 AD2d 253, 579 NYS2d 684, appeal dismissed 79 NY2d 976, 583 NYS2d 190, appeal dismissed 80 NY2d 890, 587 NYS2d 900, revd 509 US 917, 125 L Ed 2d 716, cert denied ___ US ___, 130 L Ed 2d 673). In effect, these statutes were invalidated by the Davis decision. Following the Davis decision, Federal pensioners in several states, including New York, sought refunds of taxes basing their claims on the Davis opinion. The state courts were then called upon to determine whether the holding in Davis should be given retroactive application to tax years prior to the date of the decision, March 1989.

The issue of the retroactivity of the Davis holding was addressed in New York State in the case of Duffy v. Wetzler (supra). There, the Appellate Division, Second Department, held that the Davis decision applied prospectively only and did not require a refund of tax for years before the issuance of the Davis decision (Duffy v. Wetzler, 174 AD2d 253, 579 NYS2d 684, supra). The position taken by New York State in the Duffy case is reflected in the Division's letter to petitioners of December 8, 1989. At that time, there was no basis in State law for awarding a refund of tax, and the Division correctly advised petitioners of New York State's position concerning the retroactivity of Davis. It also advised petitioners of their right to challenge the Division's determination by filing a petition with the Division of Tax Appeals.

In Harper v. Virginia Dept. of Taxation (509 US 86, 125 L Ed 2d 74, 88), the Supreme Court held that the ruling in Davis must be applied retroactively; however, the Court did not award a refund to the Harper petitioners stating that "federal law does not necessarily entitle them to a refund." Rather, the Court restated the basic principle that the United States Constitution requires "relief consistent with due process" (id.). It remanded the case to the Virginia Supreme Court to determine whether Virginia law afforded petitioners a remedy consistent with the

minimum Federal requirements outlined by the Court in its decision (id., 125 L Ed 2d at 89). At about the same time, the Court granted certiorari and vacated the judgement of the Appellate Division in Duffy v. Wetzler for further consideration in light of the opinion in Harper (Duffy v. Wetzler, 509 US 917, 125 L Ed 2d 716).

On remand, the Appellate Division, Second Department, set forth the Division's position on allowing refunds for tax years prior to 1989 as follows:

> "The State of New York decided to 'pay full refunds plus interest to the approximately 10,000 federal retirees who paid State income taxes on their federal pensions prior to 1989 pursuant to tax provisions that were later held to be unconstitutional under Davis [and] . . . Harper . . . and who have filed timely administrative claims for refunds for those taxes with the Department of Taxation and Finance,' and notified this court of that decision in a letter dated June 29, 1984." (Duffy v. Wetzler, 207 AD2d 375, 616 NYS 2d 48, 50; emphasis added.)

It was at about this same time that petitioners were informed that New York State had decided to approve refunds of taxes paid to New York on Federal pensions.

C. The Division denied petitioners' refund claims for 1986, 1987 and 1988 on the sole ground that they were not filed until August 17, 1994, more than three years from the filing of the returns for those years. Petitioners do not claim that they filed their refund claims within the period of limitation set forth at Tax Law § 687(a).[1] Rather, they claim that allowing the Division to assert a statute of limitations defense to the petition is inequitable. Petitioners complain that a Division employee provided them with erroneous information concerning refund filing requirements advising them that "they would need to file only one form which would cover all the years for which they had a claim" (Answer to Motion for Summary Determination, ¶ 4). Furthermore, they assert that the Division's letter of December 8, 1989 led them to believe that "any further attempts to file additional refund claim forms would be an exercise in futility" (Answer to Motion for Summary Determination, ¶ 7). Based on this conduct of the Division, petitioners ask that the Division be estopped from invoking the statute

[1]At paragraph 6 of the petition, petitioners allege that their 1988 income tax return was filed "under protest". This statement was never clarified or elaborated on through introduction of evidence or affidavits. Petitioners state in their response to the Division's motion for summary determination that there are no material facts in issue, and they did not raise the filing of an informal claim for refund as a legal issue in this proceeding. To the extent that their petition indicates that they might have had such a claim, I am considering that claim to have been abandoned.

of limitations defense or, in the alternative, that petitioners be granted refunds pursuant to the special refund authority of Tax Law § 697(d).

D. I will first address whether the doctrine of estoppel is applicable against the Division.

As a general proposition, the doctrine of estoppel is not applicable to governmental acts absent a showing of exceptional facts which require its application to avoid a manifest injustice (Matter of Sheppard-Pollack v. Tully, 64 AD2d 296, 409 NYS2d 847; Matter of Turner Constr. Co. v. State Tax Commn., 57 AD2d 201, 394 NYS2d 78). The doctrine as it applies to tax matters was concisely stated in Schuster v. Commissioner (312 F2d 311, 62-2 US Tax Cas ¶ 12,121). There, the court, after recognizing that

estoppel should be applied against the government with utmost caution and restraint, stated:

> "It is conceivable that a person might sustain such a profound and unconscionable injury in reliance on the Commissioner's action as to require, in accordance with any sense of justice and fair play, that the Commissioner not be allowed to inflict injury. It is to be emphasized that such situations must necessarily be rare, for the policy in favor of an efficient collection of the public revenue outweighs the policy of the estoppel doctrine in its usual and customary context" (Schuster v. Commissioner, supra at 317).

As the Tax Appeals Tribunal noted in Matter of Harry's Exxon Serv. Sta. (Tax Appeals Tribunal, December 6, 1988), "[e]xceptions to the doctrine have indeed been rare and limited to unusual fact situations." In order for the doctrine of estoppel to apply, petitioners must show that they were entitled to rely on the conduct of the Division; that, in fact, there was such reliance; and that such reliance was to the detriment of petitioner (Matter of AGL Welding Supply Co., Tax Appeals Tribunal, May 11, 1995; Matter of Harry's Exxon Serv. Sta., supra).

Petitioners complain that they detrimentally relied on two representations of the Division. The first is an oral instruction that petitioners "only needed to file one refund form for the previous three (3) years" (Petition, § 4). Inasmuch as the Division moved for summary determination asserting that no factual questions exist and the Division has offered no evidence to counter this allegation, I will treat it as proven. Nonetheless, I cannot find it a sufficient basis for an estoppel.

Petitioners' explanation of the instruction they received is not very detailed. If a Division employee instructed petitioners to file for three years on one form, this was contrary to the instructions on the refund claim form (IT-113-X). However, the basis for the Division's denial of a refund was not petitioners' use of a single claim form but their failure to state that the claim was for four years. A timely claim for refund can be made in an informal manner. But even an informal claim must be in writing, apprise the taxing authority that a refund is sought and identify the tax period in question (Matter of Rand, Tax Appeals Tribunal, May 10, 1990). The claim form filed by petitioners nowhere indicates that it was intended to be a claim for any year other than the tax year ending December 31, 1985. Petitioners could not reasonably have believed that the Division would construe this refund claim to include the years 1986, 1987 and 1988. The allegations of the petition and the affidavit of petitioners' representative are unclear regarding exactly what was said to Mr. Walter by the Division employee. Without adequate proof that the Division explicitly advised petitioners that a claim for one specified tax year, 1985, would be deemed to be a claim for the years 1985 through 1988, I cannot find that there was any conduct by the Division which justifies the application of the doctrine of estoppel.

My conclusion with respect to the Division's letter of December 8, 1989 is similar. Petitioners may have interpreted that letter to mean that a claim for a refund of taxes paid in 1986, 1987 and 1988 would be futile. However, there is no language in the letter which would have caused a reasonable person to abandon the remedies made available to him under the Tax Law. New York State's refund procedure insures that each taxpayer will have a complete and adequate review of any refund claim. New York allows a taxpayer to file a claim for refund of an overpayment of tax within three years from the time the return was filed or two years from the time the tax was paid (Tax Law § 687[a]). The denial of a timely refund claim is subject to review by the Tax Appeals Tribunal if a petition is filed within two years of the Division's issuance of a notice of disallowance (Tax Law §689[c]). A taxpayer may petition for judicial review of a Tax Appeals Tribunal decision through the procedure set forth at Article 78 of the Civil Practice Law and Procedure (Tax Law § 2016). The Division advised petitioners of their

right to seek a review of its Notice of Disallowance for 1985 by filing a petition with the Division of Tax Appeals. The Division did not advise petitioners not to file refund claims for other years or to abandon their claim for 1985. Accordingly, I see no basis for invoking the doctrine of estoppel in this case.

E. Next, I will address petitioners' request that their refunds be granted pursuant to the special refund authority found in Tax Law § 697(d). That provision states:

> "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."
> (Emphasis added.)

While the refund authority granted by Tax Law § 697(d) is discretionary, it must be shown that the moneys at issue have been erroneously or illegally collected or paid by the taxpayer under a mistake of facts (Matter of Fiduciary Trust Co. v. State Tax Commn., 120 AD2d 848, 502 NYS2d 119). The decision of the Tax Appeals Tribunal in Matter of Mackey (Tax Appeals Tribunal, March 23, 1989) succinctly outlines the relevant standard.

> "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; Wendell Foundation v. Moredall Realty Corp., 176 Misc 1006, 1009). 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; Wendell Foundation v. Moredall Realty Corp., supra)."

In the present case, no monies were paid by petitioners under a mistake of fact. Petitioners properly paid New York State personal income tax on Federal pension benefits received in the years 1985 through 1988. The issue of whether New York State could provide its pensioners with a tax exclusion without providing the same exclusion to Federal pensioners was a question of law which was resolved by the March 28, 1989 decision of the Supreme Court in Davis v. Michigan Dept. of Treasury (supra). Whether the holding in Davis must be applied retroactively to tax years before the decision was issued is also a legal question, and it

was finally resolved in the case of Harper v. Virginia Dept. of Taxation (supra). Since petitioners have not shown that taxes were paid under a mistake of fact, there is no basis for exercising the special refund authority of Tax Law § 697(d).

F. The motion of the Division of Taxation for summary determination in its favor is granted, and the petition of Howard J. and Delores J. Walter is denied.

DATED: Troy, New York
November 7, 1996

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE