

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CATHERINE R. MANNY	:	DETERMINATION
for Redetermination of a Deficiency or for	:	DTA NO. 814957
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1986, 1987 and	:	
1988.	:	

Petitioner, Catherine R. Manny, 1550 7th Avenue, Watervliet, New York 12189, filed a petition 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.

The Division of Taxation ("Division"), by its representative, Steven U. Teitelbaum, Esq. (Peter T. Gumaer, Esq., of counsel), brought a motion dated October 1, 1996 seeking summary determination in this matter. Petitioner did not respond to the motion.

Upon consideration of the Division's motion papers and exhibits contained therein, including the affirmation dated September 30, 1996 of Peter T. Gumaer, Esq., and an affidavit dated September 30, 1996 of Charles Bellamy, Frank W. Barrie, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner is entitled to a refund of personal income taxes paid on Federal pension income, when her refund claims were not filed within three years of the filing of tax returns for the years at issue.

FINDINGS OF FACT

1. During 1986, 1987 and 1988, petitioner's now deceased husband received income from a Federal pension from his prior employment at the Watervliet Arsenal. Petitioner and her husband timely filed New York State income tax returns for each of these years on which they reported the Federal pension income as taxable to New York State.

2. According to the affidavit of Charles Bellamy, a tax technician, dated September 30, 1996, petitioner "failed to file refund claims or amended returns within three years of the filing of the original return [sic]." According to Mr. Bellamy, petitioner filed claims for refund of taxes paid on Federal pension income for the 1986, 1987 and 1988 tax years on October 15, 1994. Consequently, petitioner was issued a notice of disallowance.

3. The notice of disallowance, dated January 30, 1995, issued by the Division of Taxation to petitioner, which is included in the motion record, explained:

"Unfortunately, the refund claim(s) you have filed cannot be paid either because no tax was paid on your pension income or the claim(s) was not timely filed."

In light of Mr. Bellamy's affidavit, it would appear that tax was paid on the pension income at issue, and petitioner's refund claims were, in fact, denied because they were not timely filed.

CONCLUSIONS OF LAW

A. A party may move for summary determination pursuant to 20 NYCRR 3000.9(b) after issue has been joined. The regulations provide that the motion may be granted if the movant has sufficiently established that no material and triable issue of fact is present, and the motion may be denied "if any party shows facts sufficient to require a hearing of any material and triable issue of fact" (20 NYCRR 3000.9[b][1]). Based upon the motion papers and in particular the affidavit of Charles Bellamy, it may be concluded that there is no issue of fact concerning petitioner's filing of timely refund claims for 1986, 1987 and 1988 within three years of the filing of tax returns for these years. Petitioner, who did not respond to the Division's motion, has not shown facts sufficient to require a hearing on whether she filed refund claims for 1986, 1987 and 1988 within three years of the filing of tax returns for such years.

B. The issue 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).

C. 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 procedures 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)".

Accordingly, in light of petitioner's failure to file refund claims within three years of the filing of tax returns for the years at issue, her petition is properly denied.

E. The petition of Catherine R. Manny is denied, and the Division's disallowance of petitioner's claims for refund for 1986, 1987 and 1988 is sustained.

DATED: Troy, New York
January 16, 1997

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE