STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MAUREEN W. MICEK AND AUGUST J. MICEK (deceased)	:	DETERMINATION
	:	DTA NO. 815062
for Redetermination of a Deficiency or for Refund of Personal Income Tax Under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 1986.	:	
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Petitioners, Maureen W. Micek and August J. Micek (deceased), 91 Lakeview Avenue, Scarsdale, New York 10583-5123, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the year 1986.

The Division of Taxation, by its representative, Steven U. Teitelbaum, Esq., (Peter T. Gumaer, Esq., of counsel), brought a motion dated January 27, 1998, for an order of summary determination pursuant to 20 NYCRR 3000.9(b) and Tax Law § 687(a). Petitioners, by their representative, Andrew Micek, Esq., filed a response and a cross-motion on February 23, 1998. The Division of Taxation did not respond to the cross-motion. The date the response was due was March 24, 1998, which date commenced the 90-day period for issuance of this determination. Based upon the motion papers and the pleadings, Jean Corigliano, Administrative Law Judge, renders the following determination.

ISSUE

Whether the payment of a penalty for understating tax due in January 1990 extended or revived the statutory period of limitation for filing a claim for refund of personal income taxes paid in 1987.

FINDINGS OF FACT

1. On or about April 15, 1987, Maureen W. Micek and August J. Micek , filed a 1986 New York State and City personal income tax return, filing separately on one return. [1] On that return, August J. Micek reported total New York income of $85,689.00 including Federal pension income of 43,164.00.

2. Upon audit of the 1986 tax return, the Division issued to Mr. and Mrs. Micek a Statement of Income Tax Adjustment (Notice and Demand for Payment) assessing additional tax due of $667.23 plus interest (assessment number R8712308723). The assessment was predicated on a determination that Mr. and Mrs. Micek misstated the amount of New York State and City tax due on their net income and owed additional tax as a consequence. According to the Statement of Income Tax Adjustment, $1,665.00 was withheld from Mr. and Mrs. Micek's wages and an additional payment of $3,160.00 was made with the filing of the 1986 return, yielding total tax paid in or about April 1987 of $4,825.00. Total tax due was determined to be $5,492.23, resulting in a tax deficiency of $ 667.23. It is not certain whether the assessment was later paid or canceled. In any case, the Division issued a notice to Mr. and Mrs. Micek, dated

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[1] A copy of Mr. and Mrs. Micek's 1986 IT-201 Resident Income Tax Return was submitted into evidence by the Division of Taxation (the "Division"). The return is not signed or dated, and a notation on the bottom of the form refers to a Notice and Demand dated December 30, 1987. It is not known whether this is a copy of a return that was actually filed with the Division or a copy provided to the Division in connection with this or another proceeding. Pursuant to Tax Law § 683(b) a personal income tax return filed before the last date for filing is "deemed to be filed on such last day." In this case, the deemed filed date is April 15, 1987.

August 4, 1988, which states that the assessment was canceled either as a result of correspondence or a conference.

3. The Division issued a second Notice and Demand for Payment of Tax Due for the 1986 tax year to Mr. and Mrs. Micek (notice no. L001411480-9). It is dated January 22, 1990 and assesses a penalty of $136.68 (the New York City tax portion of this penalty is 64 cents) based upon "underestimation of your New York State Income Tax." Mr. Micek died on May 30, 1989. Mrs. Micek paid a penalty of $136.04 on or about January 23, 1990.

4. On or about September 28, 1990, Mr. Andrew M. Micek, acting as executor of Mr. Micek's estate, filed a claim for refund of personal income taxes paid by Mr. and Mrs. Micek (hereinafter "petitioners") for 1986. In that claim, he asserted that the entire amount of Mr. Micek's Federal pension income should have been excluded from the calculation of New York State income. He states that he cannot locate the 1986 tax return but believes that in 1986 petitioners may have claimed an exclusion from tax in the amount of $20,000.00 and might also have filed an amended return.

5. The Division issued a Notice of Disallowance to Mrs. Micek, dated February 27, 1995, denying the claim for refund of taxes paid for the 1986 tax year on the ground that the claim was not filed within three years of the date of filing of the original 1986 return as required by the Tax Law.[2] Three years from the deemed filed date of April 15, 1987 is April 15, 1990, and, as noted, a claim for refund was not filed until September 28, 1990.

[2] Tax Law § 687(a) requires that claims for refund of tax be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later. New York City Administrative Code § 11-1787(a) contains language identical to the Tax Law. Future references in this determination to Tax Law § 687(a) may be deemed to include references to section 11-1787(a).

6. In a letter to the Division dated February 18, 1995, Andrew Micek made several inquiries regarding refunds requested on behalf of petitioners for the 1986, 1987 and 1988 tax years. The letter concedes that the 1986 refund claim was not filed until September 1990. It goes on to state that petitioners believe the claim was timely since it was made within two years of the payment of $136.04 made on or about January 23, 1990. The Division responded in a letter dated March 6, 1995 where it agreed to refund the payment of $136.04 but stated that petitioners' refund claim was only timely with respect to the payment made in January 1990. The basis for granting the refund is not stated in the Division's letter, but it may reasonably be inferred that the Division agreed with petitioners' claim that they had erroneously been required to pay New York State and City income tax on Mr. Micek's Federal pension income.

7. Following the issuance of a Conciliation Order, dated April 12, 1996, sustaining the Notice of Disallowance, petitioners filed a petition in the Division of Tax Appeals. In that petition, petitioners concede that a claim for refund for the 1986 tax year was not filed within three years of the filing of the 1986 tax return. Petitioners note that a tax payment was made for the 1986 tax year in January 1990 (before the three-year period of limitations expired), and they argue that the Division erroneously limited their refund to the amount of tax paid in January 1990.

8. The Division filed a timely answer to the petition and the instant motion for summary determination seeking dismissal of the petition. The Division's motion papers include an affidavit sworn to by Charles Bellamy, a Tax Technician whose duties include the review and processing of refund claims. Mr. Bellamy states that petitioners' 1986 personal income tax return was filed on or before April 15, 1987 and that the first refund claim for that year was filed on or about September 28, 1990. The Division reiterated its position that, with the exception of

the $136.04 payment, petitioners failed to file a claim for refund of tax within three years of the filing of the return or two years of the payment of tax.

9. Petitioners then filed a cross-motion for summary determination based primarily on a theory of equitable estoppel. Andrew Micek asserts that the Division's instructions led him to believe that a refund claim for 1986 could be filed within two years of a payment of tax. Since an assessment for 1986 was paid in January 1990, Mr. Micek believed that he had until about January 26, 1992 to file a claim for refund of all taxes paid for 1986. To support their estoppel argument, petitioners submitted the Division's instructions to Form IT-201-X, Amended Resident Income Tax Return. It states: "Generally, an amended return claiming credit for, or a refund of, an overpayment must be filed within three years of the date that the original return was filed, or within two years of the date *the tax was paid*, whichever is later" (emphasis added). Petitioners argue that a reasonable taxpayer could interpret this statement to mean that a taxpayer has two years from the time tax is paid for any given year to file a claim for refund in connection with that year. They contend that nothing in the statement informs a taxpayer that the refund amount is limited to the amount of tax paid within the two-year period. Thus, petitioners argue, they reasonably relied to their detriment on an affirmative statement of the Division and are entitled to a determination estopping the Division from denying their refund claim for 1986 on the basis of the statute of limitations. The Division did not respond to the cross-motion.

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]). There are no facts in

dispute in this proceeding. Petitioners concede that they did not file a claim for refund of 1986 personal income taxes within three years of the time their 1986 personal income tax return was filed or within two years of the time the tax shown as due on that return was paid.

The parties agree that Mrs. Micek satisfied an assessment for the 1986 tax year by paying a penalty of $136.04 on or about January 23, 1990. They also agree that on or about September 28, 1990, petitioners filed a claim for refund of income taxes paid for 1986. The Division's reply to petitioner's claim for refund of 1986 taxes is found in its Notice of Disallowance, dated February 27, 1995, where the Division stated that the refund claim is timely only with respect to the taxes paid in January 1990. Since no material facts are in dispute, a determination may be issued as a matter of law.

B. Tax Law § 687(a) states:

> General.--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, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. . . . If the claim is not filed within the three year period, but is filed within the two year period, *the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim* (emphasis added).

The deemed date of filing of petitioners' 1986 personal income tax return is April 15, 1987. In accordance with Tax Law § 687(a), they had, at the latest, until April 15, 1990 to file a claim for refund of the tax paid with the filing of the 1986 return. The statute of limitations expired without petitioners having filed such a claim; however, in January 1990, petitioners satisfied a penalty assessment for 1986 with a payment of $136.04 and, nine months later, filed a claim for refund of taxes paid for 1986. Under Tax Law § 687(a), the amount of the refund could not exceed the portion of the tax paid during the two year period immediately preceding the filing

of the refund claim. That amount is $136.04, and it was refunded to petitioners. The Division's is the only reasonable interpretation of the plain language of Tax Law § 687(a). Petitioners' interpretation of the statutory language is unreasonable. They state:

> In terms of complying with the *period of limitations*, the Tax Law makes no direct distinction between a refund claim filing under the 3 year period as against the same filing within the 2 year period. Even though there may be a limit under law of the refund *amount* depending on the timing of the refund claim, the law does *not* appear to set up two separate limitation periods (dependent on the timing of the refund claim filing) applicable to the same tax year. The taxpayer asserts that there has been compliance with filing requirements. Thus, the taxpayer is not asking the Division to waive the three year period of limitations in a direct sense since the taxpayer is arguing that compliance with the two year period equally satisfies the period of limitations. (Petitioners' brief, p. 2, emphasis in original, original all in capital letters.)

There is no interpretation of the facts of this case which supports petitioners' claim that they complied with the two-year period of limitation with respect to taxes paid with the filing of their 1986 tax return. The two-year period for requesting a refund of taxes paid in April 1987 expired in April 1989 — before petitioners paid the penalty assessment and before they filed a claim for refund of taxes paid in 1987. Since petitioners did not file a claim for refund of taxes within three years of the date of filing of their 1986 return or within two years of the time taxes shown as due on that return were paid, the Division is without authority to refund taxes paid by petitioners in 1987. Moreover, the January 1990 payment could not extend the period of limitation for claiming a refund of taxes paid in 1987 or revive an expired period.

C. Petitioners claim that the Division should be estopped from denying their refund claim because the instructions to Form IT-201-X, Amended Residential Income Tax Return, which contains language paralleling the statute, led Andrew Micek to believe that he had two years from the $136.04 payment to file a claim for refund for all taxes paid for 1986. This estoppel argument is meritless.

As a general rule, the doctrine of estoppel cannot be invoked against the State or its governmental units unless such exceptional facts exist as would require its application in order to avoid "manifest injustice" (***Matter of Wolfram v. Abbey***, 55 AD2d 700, 388 NYS2d 952, 954; ***Matter of Sheppard-Pollack, Inc. v. Tully***, 64 AD2d 296, 409 NYS2d 847, 848). This rule is particularly applicable with respect to a taxing authority because sound public policy favors full enforcement of the Tax Law (***Matter of Turner Construction Co. V. State Tax Commn.***, 57 AD2d 201, 394 NYS2d 78, 80). Thus, an estoppel against a taxing authority "must be limited to truly unusual fact situations" (***Matter of Glover Bottled Gas Corp.***, Tax Appeals Tribunal, September 27, 1990).

Petitioners' estoppel argument is premised on the assertion that "a reasonable taxpayer would assume that a reference to 'two years from payment of the tax' would refer to the type of tax — e.g. income tax — rather than that part of the income tax that could somehow be allocated to a particular source of income" (Petitioners' brief, p. 2, original all in capital letters).

This argument does not satisfy the standard for applying an estoppel. The Division's instructions state that an amended return claiming a refund must be filed "within two years of the date the tax was paid." The $136.04 payment was the only tax paid by petitioners within two years of the date of the refund claim. It was not reasonable for petitioners to interpret the language of the instructions to mean that the $136.04 payment extended the statute of limitations for taxes paid in 1987. Petitioners do not even quote the instructions accurately. There is no reference in the instructions to "payment of the tax". The language used is from the time the "the tax was paid." This cannot be interpreted as a general reference to a type of tax, such as income tax, as petitioners contend. Moreover, interpreting the language as petitioners do would defeat the purpose of a statute of limitations by enabling a taxpayer to keep the refund period open

indefinitely. To form the basis for an estoppel, petitioners were required to show that the Division's instructions were so confusing or vague that petitioners' interpretation of those instructions would appear reasonable (***see***, ***Matter of Eastern Tier***, Tax Appeals Tribunal, December 6, 1990). That was not the case here where the Division's instructions were as clear as language ever can be, and petitioners' interpretation of those instructions is unreasonable.

D. The motion of the Division of Taxation for summary determination in its favor is granted; the petition of Maureen W. Micek and August J. Micek (deceased) is denied; and the Notice of Disallowance is sustained.

DATED: Troy, New York
April 23, 198

/s/ *Jean Corigliano*
ADMINISTRATIVE LAW JUDGE