

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>RICHARD T. and BARBARA L. GITSHAM</b>	:	<b>DETERMINATION</b>
	:	DTA NO. 815133
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law for	:	
the Years 1984 and 1988.	:	

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Petitioners, Richard T. and Barbara L. Gitsham, 1190 Dean Street, Schenectady, New York 12309-5722, 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 1984 and 1988.<sup>1</sup>

On April 25, 1997, petitioners, appearing *pro se*, and the Division of Taxation by Steven U. Teitelbaum, Esq. ( Peter T. Gumaer, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by September 15, 1997 which commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Arthur S. Bray, Administrative Law Judge renders the following determination.

***ISSUE***

Whether petitioners' refund claim for taxes paid on Federal pension income for the year 1988 is barred by the three-year limitations period of Tax Law § 687(a).

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<sup>1</sup> The issues raised by the petition for the year 1984 were resolved in an order dated January 23, 1997. Therefore, only the year 1988 remains in issue.

***FINDINGS OF FACT***

1. Petitioners filed a 1988 New York State personal income tax return on or before April 15, 1989.
2. In connection with the filing of their New York State personal income tax return for the year 1988, petitioners filed a claim for refund of income tax paid on Federal pension income for the year 1985. Similarly, petitioners filed claims for refund of personal income tax for the years 1986 and 1987 with their filings of personal income tax returns for the years 1989 and 1990, respectively.
3. In a letter dated August 30, 1991, the Division of Taxation ("Division") advised petitioner Richard T. Gitsham as follows:

"This letter is written regarding your claim for a refund of income tax with respect to federal pension benefits. In our previous response advising you of the Department's posture on the disallowance of your claim, our discussion had been based on a speedier judicial resolution of the controversy than has occurred.

"It is the Department's policy to follow the Tax Law, and binding judicial precedent when final. The Department is also supportive of any measure which, within the parameters of the law, will minimize cost and inconvenience to taxpayers and the Department, without jeopardizing their rights. Since it now appears that a final court resolution from which no appeal is taken will certainly require far more than two years from the date of our last letter, this is to let you know that a petition for a hearing regarding your entitlement to a refund upon a timely and validly interposed claim will not be necessary.

"In the interest of a uniform, just resolution of the issue, this letter constitutes the Department's assurance that when there is a final judicial determination regarding the rights of taxpayers to refunds of taxes paid on Federal pension benefits received prior to 1989, your refund claim will be automatically reconsidered without the necessity of further application on your part. You will not be required to petition for administrative adjudication unless you disagree with our determination on such reconsideration."

4. On July 11, 1994, petitioners filed a claim for a refund of New York State income tax paid on Federal pension income for the years 1984 and 1988.

5. The Division issued a Notice of Disallowance to petitioners dated August 29, 1994.

The letter, which referred to the 1984 and 1988 tax years, stated, in pertinent part:

"In accordance with the provisions of the New York State Income Tax Law, this NOTICE OF DISALLOWANCE, in full, of your claim is hereby given.

"Your claim has been disallowed as it was not timely filed. . . .

"Your 1985, 1986 and 1987 claims are being processed for refunds which you should receive in approximately 60 days."

6. Following a conciliation conference, which resulted in sustaining the Notice of Disallowance, petitioners filed a petition with the Division of Tax Appeals. The petition alleged:

"I feel the audit division erred [sic] by sending the letter dated August 30, 1991 which was misleading and led me to believe that no further application for refund would be required for tax years prior to 1989. If I had not been misled by that letter I would have protected my claim by filing form IT-113X with my 1991 taxes as I had for tax years 1985, 1986 and 1987 which I filed with my taxes in 1988, 1989, 1990 respectively.

"I have enclosed copies of letters I received from State Legislators that sympathize with my case. I have also enclosed a copy of a letter dated May 16, 1995 from the New York State Legislature to the Honorable Michael Urbach, Commissioner of State Department of Taxation & Finance encouraging a just resolution of the issue of refunds for federal retirees."

The petition included copies of letters from New York State legislators which expressed sympathy for petitioners' position.

7. The Division filed an answer, dated August 28, 1996, which asserted that petitioners failed to file a claim for refund within three years of filing a return for all relevant years and therefore the refund was denied as untimely. The Division further alleged that the "1994 decision to approve refund claims for those who paid New York State income tax on federal

pension income was solely limited to those who had filed timely refund claims under the Tax Law."

8. The refund claim form utilized by the Division states that separate refund claims must be filed for each tax year.

### ***SUMMARY OF THE PARTIES' POSITIONS***

9. Petitioners submitted a letter, dated July 18, 1997, which stated, in pertinent part:

"From the onset we followed the Davis vs Michigan case which led to the decision handed down by the U.S. Supreme Court that stated it was unconstitutional for States to tax Federal Retirees while not taxing State Retirees. So we became keenly aware we might be able to seek restitution for State taxes paid for 1985, 1986, 1987 and 1988. While New York State was appealing the Duffy vs Wetzler decision, we started filing a protective claim on Form IT-113X for the above-mentioned years when filing our taxes for 1988, 1989, and 1990 respectively, until we received the Audit Division letter of August 30, 1991. This letter led us to believe that no further application for refund would be required for tax years prior to 1989. If we had not been misled by that letter we would have protected our claim by filing form IT-113X with my 1991 taxes for the year in dispute, 1988.

"We feel a simple statement could have been included in that letter to the effect - however, you must still file for refund or protection within the time limit of three years for any year you may not have already applied for.

"We have enclosed copies of letters and Legislation we have received from State Legislators that sympathize with our case. We have also enclosed a copy of a letter dated May 16, 1995 from the New York State Legislature to The Honorable Michael Urbach, Commissioner of State Department of Taxation and Finance encouraging a just resolution to the issue of refunds for Federal Retirees."

Petitioners' letter was accompanied by the same correspondence which was attached to their petition. It also included a copy of a bill which would have permitted retired Federal employees to have until December 31, 1997 to file for refunds for the years 1985 through 1988.

10. In response to petitioners' letter, the Division submitted a letter which stated that petitioners' refund claim is barred because it was not filed within three years of the time the return was filed.

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

A. The only issue to be addressed is the timeliness of petitioners' claim for a refund for the year 1988. Tax Law § 687(a) provides that a claim for a refund shall be filed "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. . . ." Section 683(b) of the Tax Law governs when a return is deemed filed. This section states that "a return of income tax, except withholding tax, filed before the last date prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed filed on such last day." The last date prescribed by law for the filing of an income tax return is "the fifteenth day of the fourth month following the close of the taxable year" (Tax Law § 651[a]). It follows from the foregoing that where, as here, petitioners filed a timely personal income tax return for the year 1988, a claim for refund for the year 1988 had to be filed by April 15, 1992. Since petitioners did not file a claim for refund for the year 1988 until July 11, 1994, the claim for refund for the year 1988 was untimely (*see, Matter of Burkhardt*, Tax Appeals Tribunal, January 9, 1997).

B. Petitioners maintain that the Division is estopped from denying the refund on the basis of the letter dated August 30, 1991. Before proceeding to the merits of this argument, certain general principles should be set forth. Generally, the doctrine of estoppel does not apply to government acts unless there are exceptional facts which require the application of the doctrine in order to avoid a manifest injustice (*Matter of Harry's Exxon Service Station*, Tax Appeals Tribunal, December 6, 1988). When a taxing authority is involved, this rule is considered

particularly applicable because public policy supports enforcement of the Tax Law (*Matter of Glover Bottled Gas Corp.*, Tax Appeals Tribunal, September 27, 1990). In order to determine whether there should be an estoppel, the Tax Appeals Tribunal has utilized a test which asks if there was a right to rely on the representation, whether there was such reliance and whether the reliance was to the detriment of the party who relied upon the representation (*see, Matter of Harry's Exxon Service Station, supra*; *see also, Matter of Bolkema Fuel Co., Inc.*, Tax Appeals Tribunal, March 4, 1993).

C. In this matter, petitioner received a letter, dated August 30, 1991 which stated, in part:

"In the interest of a uniform, just resolution of the issue, this letter constitutes the Department's assurance that when there is a final judicial determination regarding the rights of taxpayers to refunds of taxes paid on Federal pension benefits received prior to 1989, your refund claim will be automatically reconsidered without the necessity of further application on your part. You will not be required to petition for administrative adjudication unless you disagree with our determination on such reconsideration."

D. The first question presented is whether petitioners had a right to rely on the representation. The letter of August 30, 1991 assured petitioners that their refunds claims for benefits received prior to 1989 would be automatically reconsidered without the need for further application. At the time they received this letter, petitioners had filed claims for refunds for the years 1984 through 1987. However, they had not filed a claim for a refund for the year 1988. Since the Division had not considered a claim for refund for the year 1988, there is no reason to believe that there would be a reconsideration of the claim. In addition, since the form used to file the claim for refund clearly states that a separate claim for refund must be filed for each year, petitioners should have known that they needed to separately file for 1988. In sum, petitioners' reliance on the letter of August 30, 1991 for the proposition that they did not have to file a claim for refund for 1988 was not reasonable, and therefore, the Division is not

estopped from denying the claim in issue (*see, Matter of Walter*, Tax Appeals Tribunal, May 15, 1997 [where the Tax Appeals Tribunal concluded that there was no basis to invoke the doctrine of estoppel against the Division because the petitioners had failed to demonstrate that they were explicitly advised by a Division employee that a claim for the tax year 1985 would be considered a claim for tax years 1985 through 1988]).

E. The petition of Richard T. and Barbara L. Gitsham is denied.

DATED: Troy, New York  
February 19, 1998

/s/ Arthur S. Bray  
ADMINISTRATIVE LAW JUDGE