

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**JOYCELYN (VIALIZ) JAMES** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of New : DTA NO. 816234  
York State and New York City Personal Income Tax :  
under Article 22 of the Tax Law and the New York City :  
Administrative Code for the Year 1992. :  
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Petitioner, Joycelyn (Vializ) James, 32-35 110th Street, East Elmhurst, New York 11369, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the year 1992.

A hearing was held before Jean Corigliano, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on July 22, 1998 at 10:15 A.M., which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Andrew Haber, Esq., of counsel).

***ISSUE***

Whether the statute of limitations for filing a refund claim may be tolled because of the mental incompetence of the taxpayer.

***FINDINGS OF FACT***

1. Petitioner, Joycelyn (Vializ) James, filed a 1992 resident income tax return on May 10, 1996 as a married person filing a separate return.<sup>1</sup>

2. Attached to the return is a W-2 Wage and Tax Statement (“W-2”), showing wages paid to petitioner in the amount of \$24,470.00 and State and local taxes withheld in the amount of \$1,871.00. Petitioner claimed a tax refund of \$1,781.00.

3. At the same time as filing the return, petitioner filed a Claim for Credit or Refund of Personal Income Tax where she explained that she had been unable to file a return until May 9, 1996 because of illness. A letter from Moitri Datta, M.D., was attached to the refund claim. He stated that he had been treating petitioner for depression since September 1992 and that petitioner “was unable to function in many areas of her life which required organizational capabilities, including filing her taxes.”

4. On or about October 8, 1996, the Division of Taxation (“Division”) requested that petitioner provide it with additional information, including a copy of her 1992 Federal return along with all supporting schedules. Petitioner’s accountant responded to this letter in December 1996 by providing the Division with a second refund claim (form IT-113-X), prepared by her accountant, which contained the following information:

Taxpayer filed her 1992 Tax return in May of 1996. Taxpayer believes that the statute of limitations with respect to the 1992 tax return should be tolled due to the taxpayer’s mental incapacity. Attached please find physician’s letter detailing taxpayer’s mental health condition for the period in question. (Original entirely in capital letters.)

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<sup>1</sup>Petitioner was married in 1995 to Mr. James, but she filed using her former name, Vializ.

5. In a letter dated August 12, 1996, Dr. Datta explained petitioner's condition as follows:

Ms. Joycelyn Vializ has been in treatment with me since September 1992. She had been suffering from March 1992 with symptoms of severe anxiety and depression accompanied by panic attacks. In addition she experienced great difficulty in concentrating and focussing her thoughts as well as organizing herself and was not able to function at most usual tasks.

She has been diagnosed as having Post Traumatic Stress Disorder with symptoms of Depression, Anxiety and Panic. Psychotropic medications have been necessary for treatment and she is presently on a combination of Pamelor (anti-depressant) and Ativan (anti-anxiety).

6. The Division was also provided with a copy of petitioner's amended 1992 Federal income tax return which contains this explanation of petitioner's position:

Taxpayer filed her 1992 tax return in May of 1996. Taxpayer believes that the statute of limitation with respect to the 1992 tax return should be tolled due to the taxpayer's mental incapacity. Attached please find physician's letter detailing taxpayer's mental condition for the period in question. Taxpayer cites [sic] the following court [sic] decisions as a basis for her claim. (1) M. Brockamp, CA-9, 95-2 (2) N.T. Scott, DC Hawaii, 92-2 (3) D. Johnsen, DC NY, 91-1. (Original all in capital letters.)

7. The Division issued to petitioner a Notice of Disallowance, dated December 31, 1996, denying petitioner's refund claim on the ground that it was not filed within the statutory period of limitations set forth in Tax Law § 687(a). The notice also states: "The New York State Tax Law does not conform with the Internal Revenue Service Regulations concerning equitable recoupment/tolling." After a conciliation conference, a Conciliation Order, dated September 12, 1997, was issued to petitioner sustaining the refund denial.

8. Petitioner was employed as a teacher by the New York Board of Education when, on March 13, 1992, she injured her lower back lifting a student. As a result of the injury, petitioner was granted "line-of-duty" injury status. In May, June and July 1992, a Board of Education physician examined petitioner and found her unfit to return to work. On August 21, 1992, a Board of Education physician determined that petitioner had recovered sufficiently to resume her

teaching duties, and petitioner was taken off of line-of-duty status as of September 8, 1992. As of September 15, 1992, petitioner had failed to return to work, and on November 3, 1992, petitioner was terminated from her position for failing to return to work on September 8, 1992.

9. Petitioner suffered from depression and anxiety caused at least in part from the decision of the Board of Education to remove her from line-of-duty status as of September 8, 1992. Petitioner filed a discrimination complaint with the Board of Education's Office of Equal Opportunity on October 14, 1992, and a charge of discrimination with the United States Equal Employment Opportunity Commission on December 17, 1992. She also grieved the Board of Education's determination to remove her from line-of-duty status. On September 19, 1993, petitioner was informed that she was entitled to monthly disability benefits from Social Security.

10. Petitioner filed a complaint in Federal District Court on November 19, 1993, alleging that the Board of Education's decision to terminate her violates the Americans with Disabilities Act. The status of that suit is unknown; however, it is known that the Federal court denied the motion of the Board of Education to dismiss the complaint for failure to state a cause of action.

11. Petitioner married in 1995. Her new husband reviewed her financial papers and tax filings and brought her to his own accountant who filed the 1992 Federal and State tax returns on her behalf.

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

12. Petitioner believes that consideration should be given to her unique set of circumstances. She is struggling with a devastating illness and trying to go forward with her life after a long period of incapacity. Filing her tax returns and seeking a refund was, for her, one step forward in the process of recovery. She urges that the rule of the statute of limitations be

suspended, or tolled, where, as in her case, a refund claim was filed late because of a proven mental disability.

13. The Division takes the position that neither it nor the Division of Tax Appeals has the authority to suspend or toll the statute of limitations regardless of the individual circumstances of the taxpayer. In addition, the Division contends that petitioner did not carry her burden of proof to show mental incompetence.

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

A. The time limitations for filing of refund claims are exacting. Tax Law § 687(a)<sup>2</sup> provides as follows: “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. . . .”

It goes on to state: “If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim. . . .”

B. Tax Law § 687(i) provides that any income tax withheld from a taxpayer shall be deemed to have been paid on the fifteenth day of April following the close of the taxable year to which the tax relates. Here, tax was withheld from petitioner’s salary for the 1992 tax year. Pursuant to section 687(i), it was deemed to have been paid on April 15, 1993.

On May 10, 1996, petitioner filed a personal income tax return and a claim for refund of taxes paid for 1992. Section 687(a) limits the amount of the refund that may be paid under this claim to the amount of tax paid in the three-year period immediately preceding the filing of the

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<sup>2</sup>The income tax provisions of the Administrative Code of the City of New York are almost identical to the provisions of Article 22 of the Tax Law. All references in this determination to particular sections of Article 22 may be deemed to be references to the corresponding sections of the Administrative Code.

return, in this case, the amount of tax for 1992 which was paid between May 10, 1993 and May 10, 1996. Since the withheld tax is deemed to have been paid on April 15, 1993, the amount of tax paid in the three-year period immediately preceding the filing of the refund claim was zero. Accordingly, petitioner is not entitled to a refund.

C. Tax Law § 687(e) explicitly prohibits the payment of refunds where a claim is not filed within the prescribed time period. With two exceptions not relevant here, that provision provides:

No credit or refund shall be allowed or made . . . after the expiration of the applicable period of limitation specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this article.

D. Petitioner argues that it is unfair to enforce the statute of limitations against her in light of the mental disability which made it impossible for her to file her refund claim on time. Unfortunately, there are no exceptions in the Tax Law which allow for consideration of individual circumstances. In a submission made to the Division, petitioner's prior representative cited to several Federal tax cases as support for the contention that the statute of limitations may be tolled for equitable reasons. However, as the Division's representative asserted, section 687(e) precludes consideration of the Internal Revenue Code or any other law when applying the refund provisions of the Tax Law. Moreover, two of the cases cited by petitioner were overturned on appeal to the Supreme Court (*United States v. Brockamp*, 519 US 347, 136 L Ed 2d 818, *rev'd United States v. Brockamp*, 67 F3d 260; *United States v. Scott*, 70 F3d 120). In *Brockamp*, the Supreme Court held that mental incompetence does not toll the statute of limitations applicable to tax refund suits (*id.*). An earlier Court of Appeals case cited by

petitioner's representative is of dubious authority in light of the opinion in *Brockamp* (*see, Johnsen v. United States of America*, 758 F Supp 834).

E. In summary, the Tax Law does not provide authority to either the Commissioner of Taxation and Finance or the Tax Appeals Tribunal to forgive late filing of a refund claim because of individual circumstances, no matter how sympathetic those circumstances may be.

F. The petition of Joycelyn (Vializ) James is denied, and the Notice of Disallowance issued on December 31, 1996 is sustained.

DATED: Troy, New York  
December 17, 1998

/s/ Jean Corigliano  
ADMINISTRATIVE LAW JUDGE