

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ANNA WASSERMAN	:	DETERMINATION
	:	DTA NO. 817454
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income Taxes	:	
under Article 22 of the Tax Law and the Administrative	:	
Code of the City of New York for the Year 1991.	:	

Petitioner, Anna Wasserman, 2300 Olinville Avenue, Apt. 8F, Bronx, New York 10467, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the year 1991.

On April 12, 2000, the Division of Taxation, by its representative, Barbara G. Billet, Esq. (Herbert M. Friedman, Jr., Esq., of counsel) filed a motion for an order granting summary determination to the Division of Taxation pursuant to section 3000.9(b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal on the ground that there exists no material and triable issue of fact. Petitioner, appearing by her son, Ralph Wasserman, filed a response to the motion on May 10, 2000, which date commenced the 90-day period for the issuance of this determination. Based upon the motion papers, the affidavits and documents submitted therewith, the response by petitioner and all the pleadings and documents submitted in connection with this matter, Brian L. Friedman, Administrative Law Judge, renders the following determination.

ISSUE

Whether, pursuant to Tax Law § 687(a), the Division of Taxation properly denied petitioner's claim for refund.

FINDINGS OF FACT

1. For the tax year 1991, petitioner made four estimated payments of tax totaling \$6,000.00. By check dated April 13, 1991, she paid the sum of \$2,000.00; by check dated June 15, 1991, she paid \$1,800.00; by check dated September 16, 1991, the sum of \$1,200.00 was paid; and \$1,000.00 was paid by check dated January 13, 1992.

2. Diane Parsons, Tax Technician I for the Audit Division of the Division of Taxation ("Division"), reviewed and searched the Division's files regarding this petitioner. Her review indicated that petitioner claimed an overpayment of estimated taxes in the amount of \$5,647.00 for the 1990 tax year. On her 1990 return, petitioner requested that this overpayment be applied to her 1991 tax year liability. Petitioner's 1990 New York State return was filed on or after April 7, 1995.

3. Ms. Parsons reviewed the Division's files concerning petitioner's 1990 return and found that all of her estimated payments for the tax year 1990 were made on or before April 13, 1991, which was more than three years before her 1990 return was filed on or after April 7, 1995. Accordingly, petitioner's claim for a credit for the 1990 tax year was disallowed as untimely pursuant to Tax Law § 687.

4. Petitioner received an extension of the deadline for filing her 1991 return until August 15, 1992. However, the 1991 return was not filed until on or after April 8, 1996. On her 1991 return, petitioner claimed a refund of \$9,155.00. The amount of the refund claimed consisted of

the \$6,000.00 in estimated payments plus the \$5,647.00 credit from her 1990 return (*see*, Finding of Fact “2”), minus the amount of tax due for the year 1991 (\$2,492.00).

5. On December 2, 1996, the Division denied petitioner’s claim for refund for the 1991 tax year. The letter explained, in pertinent part, as follows: “The Tax Law provides for the granting of a refund or credit if the request is filed within three (3) years from the time the return was required to be filed or within two (2) years from the time the tax was paid, whichever is later.”

6. On September 17, 1999, the Division’s Bureau of Conciliation and Mediation Services issued a Conciliation Order (CMS No. 172278) denying petitioner’s request for a refund for the 1991 tax year. Petitioner thereupon filed a petition with the Division of Tax Appeals seeking an administrative review of the Conciliation Order.

CONCLUSIONS OF LAW

A. Tax Law § 687(a) provides as follows:

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 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 plus the period of any extension of time for filing the return

B. Petitioner’s claim for refund was filed as part of her 1991 income tax return filed on or after April 8, 1996. Since it was filed simultaneously with the return, it complies with the provisions of Tax Law § 687(a) which mandates that a claim for refund be filed within three years from the time the return was filed.¹ Part of the refund claimed by petitioner consisted of an

¹ It must be noted that the claim for refund was not filed within two years from the time the tax was paid since the last of petitioner’s estimated tax payments for 1991 was made on January 13, 1992 and the claim for refund was filed on or after April 8, 1996.

overpayment for the 1990 tax year; all of petitioner's estimated payments for 1990 were made on or before April 13, 1991. The remaining portion of the refund claim resulted from an overpayment of estimated tax for the year 1991; she did not pay any portion of her 1991 estimated payments after January 13, 1992.

C. Since the return for 1991 which constituted the claim for refund was filed on or after April 8, 1996, the amount of the credit or refund may not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return (petitioner received a four-month extension for filing her 1991 return). Accordingly, since no payment of tax was made by petitioner after January 13, 1992 for the 1991 tax year, it is clear that the Division properly denied petitioner's claim for refund pursuant to Tax Law § 687(a).

D. A motion for summary determination may be granted:

if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party (20 NYCRR 3000.9[b][1]).

E. Petitioner's response, filed on May 10, 2000, admits that there are no issues of fact in dispute, but contends that the Division's interpretation of Tax Law § 687 and its application to this case "is egregiously unfair" and "would result in a gross miscarriage of justice." Petitioner offered no basis for these contentions and they must, therefore, be rejected. Moreover, by virtue of the fact that petitioner admits that there are no issues of fact in dispute, the Division's motion for summary determination must be granted.

F. The Division of Taxation's motion for summary determination is granted and the petition of Anna Wasserman is hereby denied.

DATED: Troy, New York
July 20, 2000

/s/ Brian L. Friedman
ADMINISTRATIVE LAW JUDGE