

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>WILLIAM M. AND JUDI L. WALLACE</b>	:	DETERMINATION
	:	DTA NO. 818025
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law for	:	
the Years 1990 through 1993.	:	

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Petitioners, William M. and Judi L. Wallace, 1357 East 65<sup>th</sup> Street, Brooklyn New York 11234, 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 1990 through 1993.

On December 4, 2000, the Division of Taxation, by its representative, Barbara G. Billet, Esq. (Michelle M. Helm, Esq., of counsel) filed a motion for an order granting summary determination to the Division of Taxation pursuant to sections 3000.5 and 3000.9 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. Petitioners, appearing *pro se*, filed a response to the motion on December 27, 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 petitioners 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 petitioners' claim for refund for the years at issue.

### ***FINDINGS OF FACT***

1. Petitioners timely filed their New York State personal income tax returns and paid the tax due for each of the years at issue, i.e., they filed and paid the tax due for 1990 on or before April 15, 1991; they filed and paid the tax due for 1991 on or before April 15, 1992; they filed and paid the tax due for 1992 on or before April 15, 1993; and they filed and paid the tax due for 1993 on or before April 15, 1994.

2. On or about September 3, 1998, petitioners filed amended returns seeking refunds for the years 1990 through 1996 of New York State personal income tax paid on Internal Revenue Code § 414(h) retirement contributions for these years.

3. Petitioners received refunds for the years 1994 through 1996. However, on February 16, 1999, the Division of Taxation (“Division”) issued a Notice of Disallowance to petitioners, relative to the years 1990 through 1993, which stated, in pertinent part, as follows: “New York State Tax Law does not permit us to allow the claim for refund. You should have filed your claim within three years from the date the return was due or two years from the date the tax was paid, whichever is later.”

### ***SUMMARY OF PETITIONERS’ POSITION***

4. Petitioners admit that their claim for refund for the years 1990 through 1993 was filed beyond the statutory period set forth in Tax Law § 687 of the Tax Law.<sup>1</sup> However, in their response to the Division’s motion for summary determination, petitioners allege that their claims for refund could not have been filed within the prescribed statutory period as set forth in Tax Law § 687 since *Matter of Lonergan* (Tax Appeals Tribunal, February 13, 1997) was not issued

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<sup>1</sup> In their response to the Division’s motion, petitioners state that their claim for refund was filed in September 1999 when, in fact, such claim was filed in September 1998. Nevertheless, September 1998 was also beyond the statutory period as provided in Tax Law § 687(a).

until February 1997. Since they were issued refunds for the years 1994 through 1996, petitioners maintain that this is evidence that the taxes for all of the years (1990 through 1996) were erroneously held by the Division. They therefore argue that the special refund authority provisions of Tax Law § 697(d) are applicable.

5. Petitioners claim that they filed their returns pursuant to instructions issued by the Division which provided that retirement contributions must be added back to Federal adjusted gross income to arrive at New York adjusted gross income. On their petition filed with the Division of Tax Appeals on September 6, 2000, petitioners allege that in 1998, the Division made a determination that the amount of Internal Revenue Code § 414(h) retirement contributions did not have to be added back to Federal adjusted gross income by Manhattan and Bronx Surface Transit Operating Authority (“MABSTOA”) employees for tax years prior to 1997. As such, they argue that the moneys for the tax years at issue are being held by the Division under a mistake of facts and, accordingly, are properly the subject of the special refund authority provisions of Tax Law § 697(d).

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

A. Tax Law § 687 provides, in pertinent part, that:

(a) 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 . . . .

\* \* \*

(e) Failure to file claim within prescribed period. - - 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.

As previously noted, petitioners are not contesting the fact that the period of limitation for filing claims for refund for the years 1990 through 1993 had expired by September 3, 1998, the date on which they filed their refund claims. Accordingly, their claims for refund must be denied unless it is found that the special refund authority of Tax Law § 697(d) is applicable in this matter.

B. Tax Law § 697(d) provides as follows:

Special refund authority. - - Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller.

C. The power to grant a refund pursuant to Tax Law § 697(d) is discretionary, and before such discretion may be exercised pursuant to this section, it must be shown that the moneys at issue were either erroneously or illegally collected or were paid by the taxpayer under a mistake of facts (*Matter of Fiduciary Trust Co. v. State Tax Commn.*, 120 AD2d 848, 502 NYS2d 119).

Petitioners' contention that the Division collected their tax moneys erroneously or illegally must be rejected. Petitioners paid their taxes for the years 1990 through 1996 as was required by law at the time of the filing of the returns for each of these years and, as such, there was no erroneous or illegal collection of such moneys by the Division (*see, Matter of Lonergan*, Tax Appeals Tribunal, February 13, 1997).<sup>2</sup>

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<sup>2</sup> As previously noted, petitioners, in their response to the Division's motion, cited *Matter of Lonergan* (*supra*), as a reason for their inability to file claims for refund prior to February 1997. While *Lonergan* addressed issues of timeliness of a refund claim and application of the special refund authority provisions of Tax Law § 697(d), it dealt with the taxability of Federal pension income and, therefore, has no relevance to petitioners' ability to file claims for refund for retirement contributions made by a MABSTOA employee.

D. Petitioners also assert that the special refund authority is applicable because the moneys are being held by the Division under a mistake of facts (*see*, Finding of Fact “5”). This assertion is without merit. Tax Law § 697(d) states that the special refund authority may be invoked if the moneys were “paid by such taxpayer or other person under a mistake of facts” (emphasis added). Since the provisions of the statute apply to payments made by the taxpayer under a mistake of facts, it must be presumed that petitioners are, in fact, alleging that they paid the taxes for the years at issue under a mistake of facts.

In *Matter of Mackay* (Tax Appeals Tribunal, March 23, 1989), the Tribunal stated:

A mistake of fact has been defined as an understanding of the facts in a manner different than they actually are (54 Am Jur 2d *Mistake, Accident or Surprise* § 4; *Wendell Foundation v. Moredall Realty Corp.*, 176 Misc 1006, 1009). A mistake of law, on the other hand, has been defined as acquaintance with the existence or nonexistence of facts, but ignorance of the legal consequences following from the facts (54 Am Jur 2d *Mistake, Accident or Surprise* § 8; *Wendell Foundation v. Moredall Realty Corp.*, *supra*, at 1009). In the present case there has been no mistake of fact. Mr. Mackay properly reported the commission and realty income that he received on both his Federal and New York State tax returns.

For the years at issue, petitioners properly paid taxes on the retirement contributions until 1997 when chapter 312 of the Laws of 1997 amended various statutes, including the Tax Law, to include in the definition of officers and employees of the State or its political subdivisions whose pensions are subtracted from Federal adjusted gross income for purposes of New York State income tax, officers and employees of MABSTOA. Accordingly, it must be found that petitioners made no mistake of fact or law. Section 11 of chapter 312 provided that “[t]his act shall take effect immediately and shall apply to contributions to, and distributions from, the Manhattan and Bronx surface transportation authority pension plan made in taxable years beginning on or after January 1, 1997.” Petitioners correctly filed amended returns seeking refunds of taxes paid on retirement contributions for years prior to 1997, and the Division

properly granted refunds for each of the years for which a refund application was timely filed pursuant to the provisions of Tax Law § 687(a), i.e., tax years 1994 through 1996.

E. 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]).

Since petitioners have admitted that the statute of limitations for filing claims for refund for the years 1990 through 1993 had expired by the date on which they filed their refund claims and since it has heretofore been determined that the special refund authority provisions of Tax Law § 697(d) are not applicable herein, there remains no material and triable issue of fact.

F. The Division of Taxation's motion for summary determination is granted; the petition of William M. and Judi L. Wallace is denied; and the Notice of Disallowance, dated February 16, 1999, disallowing petitioners' refund claims for the years 1990 through 1993 is hereby sustained.

DATED: Troy, New York  
March 8, 2001

/s/ Brian L. Friedman  
ADMINISTRATIVE LAW JUDGE