

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JOHN JANECKO AND LOUISE JANECKO	:	DETERMINATION
	:	DTA NO. 818211
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax	:	
Law for the Year 1995.	:	

Petitioners, John and Louise Janeczko, 709 Kaymar Drive, Amherst, New York 14228, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1995.

Pursuant to 20 NYCRR 3000.9(b), by a notice of motion dated February 27, 2001, the Division of Taxation ("Division") moved for summary determination on the grounds that there were no material and triable issues of fact presented by the pleadings, and the uncontroverted facts mandated a finding in the Division's favor. Petitioners failed to file a response to the motion. Their response was due on March 29, 2001, which date commenced the 90-day period for issuance of this determination. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Michelle M. Helm, Esq., of counsel). After due consideration of the record, Gary R. Palmer, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly disallowed petitioners' claim for refund of personal income tax for the year 1995.

FINDINGS OF FACT

1. Petitioners failed to file a timely New York State income tax return for 1995.
2. Petitioners filed a New York State income tax return for 1995 on June 6, 2000. By this late-filed return, petitioners sought a refund of their 1995 income tax withheld in the amount of \$507.00.
3. The Division issued a notice of denial of refund to petitioners for tax year 1995 on November 9, 2000.
4. In the petition Mr. Janeczko described a period when Mrs. Janeczko was having a difficult pregnancy and was in and out of the hospital, culminating in the premature birth of their son, James, whom they nearly lost. Most understandably Mr. Janeczko was focused on his family during this period and, in his words, . . . “[he] simply forgot about everything else.” Neither James’s date of birth nor any other indication of when these events occurred is in the record.

CONCLUSIONS OF LAW

- A. 20 NYCRR 3000.9(b) provides, in part, as follows:

After issue has been joined . . . , any party may move for summary determination. . . . The motion shall 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 the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party. The motion shall be denied if any party shows facts sufficient to require a hearing of any material and triable issue of fact.

- B. Tax Law § 686 provides, in relevant part, as follows:

(a) General. - The commissioner of taxation and finance, *within the applicable period of limitations*, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax

imposed by this chapter on the person who made the overpayment, against any liability in respect of any tax imposed pursuant to the authority of this chapter or any other law on such person if such tax is administered by the commissioner of taxation and finance and The balance shall be refunded by the comptroller out of the proceeds of the tax retained by him for such general purpose. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the commissioner of taxation and finance approved by the comptroller. The comptroller, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the person who made the overpayment and other information and data available in the files of the commissioner of taxation and finance. (Emphasis added.)

C. There is no dispute that the amount of tax withheld from petitioners' wages for 1995 exceeded their tax liability for such year, thus resulting in an overpayment by petitioners in the sum of \$507.00. However, the Division has denied petitioners' claim for refund of this overpayment, citing to Tax Law § 687 which, in pertinent part, imposes limitations on credits or refunds of overpayments as follows:

(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, or if no return was filed, within two years from the time the tax was paid. 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 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 Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

* * *

(e) Failure to file claim within prescribed period. - No credit or refund shall be allowed or made, except as provided in subsection (f) of this section or subsection (d) of section six hundred ninety, 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.¹

* * *

(i) Prepaid income tax. - For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the fifteenth day of the fourth month following the close of his taxable year with respect to which such amount constitutes a credit or payment.

D. Tax Law § 687(a) required petitioners to file their claim for refund within the later of three years from the time their return was filed or two years from the time the tax was paid. The only tax payments by petitioners for the year 1995 were the amounts withheld from their wages. Under Tax Law § 687(i), these amounts were deemed paid on April 15, 1996. Petitioners' 1995 return, due to be filed by April 15, 1996, was filed on June 6, 2000. Petitioners' refund claim was included as part of their 1995 income tax return filed on June 6, 2000.² Thus, petitioners' refund claim must be considered timely in accordance with Tax Law § 687(a).

E. Notwithstanding its timeliness, petitioners' claim for refund was properly denied by the Division. Where, as here, the refund claim is made concurrently with the filing of the return, Tax Law § 687(a) limits the amount of any refund to the amount of tax paid within the three-year period immediately preceding the filing of the refund claim (*see, Matter of Petrovich,*

¹The specified exceptions, Tax Law § 687(f) and § 690(d), do not apply to this case. The former (section 687[f]) pertains to the filing of a timely petition contesting a statutory Notice of Deficiency, and allows for a determination that an overpayment has been made for the taxable year in question notwithstanding the determination of a deficiency for such year. The latter (section 689[d]) pertains to circumstances where a Notice of Deficiency is disallowed, in part or in whole, upon review, and provides that the amount so disallowed may be credited or refunded without making a separate claim therefore. Since there is no deficiency determination at issue in this proceeding, neither of these exceptions apply.

²See line 64 of 1995 Form IT-201.

Tax Appeals Tribunal, January 20, 2000). Since petitioners' payment of tax via withholding occurred more than three years before the filing of their claim for refund, Tax Law § 687(a) bars any refund to petitioners in this case.

F. There being no material and triable issues of fact requiring a hearing, the Division's motion for summary determination is granted.

G. The petition of John and Louise Janeczko is denied and the Division's Notice of Disallowance of petitioner's claim for refund is sustained.

DATED: Troy, New York
April 26, 2001

/s/ Gary R. Palmer
ADMINISTRATIVE LAW JUDGE