

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>RICHARD WIESE</b>	:	DETERMINATION DTA NO. 818517
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 1995.	:	

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Petitioner, Richard Wiese, 99 Harbor Road, St. James, New York 11780, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1995.

A small claims hearing was held before Thomas C. Sacca, Presiding Officer, at the offices of the Division of Tax Appeals, Veterans Memorial Highway, Hauppauge, New York, on May 7, 2002 at 10:45 A.M., which date began the three-month period for the issuance of this determination. Petitioner appeared *pro se.* The Division of Taxation appeared by Barbara G. Billet, Esq. (Kamal Shah).

***ISSUE***

Whether the Division of Taxation properly denied petitioner's claim for refund of taxes paid for the year 1995.

***FINDINGS OF FACT***

1. Petitioner and his wife timely filed a joint New York State personal income tax resident return for the year 1995 on or before April 15, 1996. On this return, Mr. Wiese reported, as

taxable income, sick pay earnings of \$14,400.00 paid by his employer, United Airlines, and included in his Wage and Tax Statement, Form W-2, for the year at issue.

2. On December 13, 1999, petitioner and his wife filed a joint New York State Amended Resident Income Tax Return, Form IT-201-X, for the year 1995 wherein he reduced his reported New York taxable income by the sick pay amount of \$14,400.00. This change resulted in a computed refund thereon of \$1,290.00. Petitioner explained such change as follows:

During 1995, the taxpayer was paid and taxed upon "sick pay" earnings of \$14,400 paid by the employer (United Airlines). This amount was included in the W-2 and reported on 1040. Subsequently, the employer has been awarded reimbursement from the Workers' Compensation Board as it was found that the taxpayer was permanently disabled. Therefore amounts paid to the taxpayer should have been exempt from income tax as workers' compensation.

3. On September 1, 2000, the Division of Taxation ("Division") issued a notice to petitioner and his wife disallowing in full the \$1,290.00 overpayment as claimed on their 1995 amended return. The basis for such disallowance was stated thereon as follows:

The New York State Tax Law does not permit us to allow the refund or credit claimed on your return(s).

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.

Unfortunately, we must deny your claim for refund or credit.

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

A. Tax Law § 687(a) controls refunds of overpayments of income tax in New York and provides: "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."

B. The dispute in the instant matter involves the time limitation portion of Tax Law § 687(a). Pursuant to this section, petitioner and his wife were required to file a refund claim within three years from the date of filing of their return for the year at issue. Petitioner has not raised any issues regarding any other part of section 687(a). Petitioner does not contend that he filed a timely claim for refund for the year 1995, but argues that the delay in filing the refund claim was based on the almost four years the State of New York Workers' Compensation Board took to hear and issue its decision.

C. In *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco* (496 US 18, 110 L Ed 2d 17), the Supreme Court discussed various constitutionally permissible procedural requirements available to a state to protect its interest in maintaining fiscal stability:

The State might, for example, provide by statute that refunds will be available only to those taxpayers paying under protest or providing some other *timely* notice of complaint; execute any refunds on a reasonable installment basis; *enforce relatively short statutes of limitations applicable to such actions*, refrain from collecting taxes pursuant to a scheme that has been declared invalid by a court or other competent tribunal pending further review of such declaration on appeal; and/or place challenged tax payments into an escrow account or employ other accounting devices such that the State can predict with greater accuracy the availability of undisputed treasury funds. The State's ability in the future to invoke such procedural protections suffices to secure the State's interest in stable fiscal planning when weighed against its constitutional obligation to provide relief for an unlawful tax.

The purpose of filing a refund claim in a timely manner is to put the government entity on notice of a claim for a refund so that the government can make financial provision for the possible refund (*see, Mercury Mach. Importing Corp. v. City of New York*, 3 NY2d 418, 165 NYS2d 517).

D. Clearly, the three-year statute of limitations at issue herein falls well within the range of permissible procedural protections discussed in *McKesson*. Tax Law § 687(a) establishes a permissible procedural protection, and petitioner had the opportunity to file a timely "protective"

claim for the year at issue, but did not do so (*Brault v. New York State Tax Appeals Tribunal*, 265 AD2d 700, 696 NYS2d 579).

E. Since petitioner's 1995 amended return (claim for refund) was filed beyond the period of limitations provided in Tax Law § 687(a), such claim must be considered as untimely.

F. The petition of Richard Wiese is denied and the Notice of Disallowance dated September 1, 2000 is hereby sustained.

DATED: Troy, New York  
June 6, 2002

/s/ Thomas C. Sacca  
PRESIDING OFFICER