

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
STEPHEN CHARLES INSALACO, SR.	:	DETERMINATION
	:	DTA NO. 818892
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1992 through 1996.	:	

Petitioner, Stephen Charles Insalaco, Sr., 44 Wood Cutters Circle, Rochester, New York 14612, 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 years 1992 through 1996.

On April 15, 2002 and May 1, 2002, respectively, petitioner, appearing *pro se*, and the Division of Taxation, by Barbara G. Billet, Esq. (Justine Clarke Caplan, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based upon documents and briefs to be submitted by September 20, 2002, which date commenced the six-month period for issuance of this determination (Tax Law § 2010[3]). After due consideration of the evidence and arguments submitted, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioner's claims for refund for the years 1992 through 1996 on the basis that such claims were not filed within the requisite period of limitations and were therefore untimely.

FINDINGS OF FACT

1. Petitioner, Stephen Charles Insalaco, Sr., retired, due to physical disabilities, from his employment with the Eastman Kodak Company on June 1, 1986, and has received a pension from Eastman Kodak from such time through the present.

2. Petitioner was born on July 9, 1932, and thus had reached the age of 59½ on January 9, 1992. Petitioner filed a timely New York State Resident Income Tax Return (“Form IT-201”) for each of the years 1992 through 1996.

3. On April 13, 2001, petitioner filed an amended New York State Resident Income Tax Return (“Form IT-201-X”) for each of the years 1992 through 1996, claiming refunds of tax as follows:

YEAR	AMOUNT OF REFUND CLAIMED
1992	\$ 473.00
1993	\$ 510.00
1994	\$ 562.00
1995	\$ 678.00
1996	\$ 776.00
TOTAL	\$2,999.00

4. The basis for petitioner’s claims is that, for each of the noted years, petitioner received pension income based on his employment with Eastman Kodak Company and erroneously included the same as subject to New York State personal income tax. Specifically, in calculating his New York adjusted gross income for each of the years, petitioner failed to reduce his Federal adjusted gross income (which correctly included the pension income) by the New York subtraction adjustment which allows for exclusion of pension and annuity income of up to

\$20,000.00 per year. In addition, but only with respect to the year 1993, in calculating his New York adjusted gross income, petitioner failed to reduce his Federal adjusted gross income (which correctly included federally taxable social security benefits in the amount of \$228.70) by the New York subtraction adjustment which excludes such benefits. Petitioner's amended returns for the years 1992 through 1996 reflect these subtraction adjustments which result in the claimed refunds.

5. By a letter dated May 4, 2001, the Division of Taxation ("Division") denied petitioner's claims for refund on the basis that such claims (made via the amended returns) had not been filed within the period of limitations for filing such claims. The Division's letter noted further that amended returns had been filed seeking refunds on the same basis for the ensuing years 1997 through 1999, and that such returns would be reviewed and any applicable overpayments of tax would be refunded to petitioner.

6. Petitioner challenged the refund denial by filing a request for a conciliation conference with the Division's Bureau of Conciliation and Mediation Services. A conciliation conference was held and, by a Conciliation Order (CMS No. 186908) dated November 30, 2001, the denial of petitioner's claims for refund was sustained. Petitioner continued his challenge by filing a petition with the Division of Tax Appeals.

SUMMARY OF PETITIONER'S POSITION

7. Petitioner maintains that he failed to claim the pension and annuity exclusion on his original returns because the format of the New York income tax returns was poorly designed and is misleading. Specifically, petitioner points out that in the subtraction section of the return a taxpayer is directed, at line 27, to subtract from reported Federal adjusted gross income the "Pension and annuity income exclusion." Petitioner complains, however, that the form does not

specifically alert taxpayers that the exclusion applies when the taxpayer reaches age 59½. Petitioner asserts that there is sufficient space on the return itself (at line 27) to include such an alert, that its absence renders the form flawed and misleading so as to deliberately result in taxpayers' overpaying their liability, that reference to the form's instruction booklet for guidance is insufficient, and that correction of his overpayment of tax should not be precluded, as here, by operation of the statute of limitations. Petitioner also maintains that the Division should have been aware that he had reached age 59½, should have discovered his error in failing to claim the subtraction modification, and should have corrected the same. Petitioner also asserts that the Division should have discovered his error in failing to claim the subtraction modification for social security benefits for the year 1993, and should have corrected the same.

8. Petitioner argues further that he is disabled as the result of heart ailments, surgeries, and strokes, and that the statute of limitations on filing a claim for refund should be extended or tolled based upon his disability. In this regard, petitioner points to IRS publication 556 for the proposition that the time to file an amended Federal income tax return ("Form 1040-X") may be extended if a taxpayer is physically or mentally unable to manage his financial affairs. Finally, petitioner refers to the years 1997 through 1999 during which the same pension exclusion error was made (*see*, Finding of Fact "5"). Petitioner has received refunds for these years (since the statute of limitations had not expired when petitioner filed amended returns claiming refunds for such years), and admitted that these years are not part of his claim for refund in this proceeding. However, petitioner apparently raises such years as support for his claim that he is entitled to punitive damages based on the hardship, stress and time expended in pursuing this matter.¹

¹ By a letter dated July 25, 2002, the Division objected to certain documents, including certain instruction pages relating to Federal and State income tax returns, submitted as exhibits by petitioner. By a letter dated August 5, 2002, Administrative Law Judge Jean Corigliano rejected this objection and accepted the documents in evidence.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law § 687(a), a limitations period is imposed upon taxpayers who wish to claim a refund of an overpayment of New York State income tax 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

B. Tax Law § 687(e) provides in pertinent part:

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 limitation specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes paid under this article.

C. There is no dispute that petitioner's amended returns for the years 1992 through 1996, on which the requested refunds were made, were filed on April 13, 2001. It is clear that the date of this filing falls beyond the allowable time period for filing a claim for refund for any of such years, and thus the Division's denial of petitioner's refund claims as untimely was proper and must be sustained. The foregoing statutory provisions are explicit as to the applicable time limitations, as well as in their preclusion of refunds for claims filed outside of such time limitations.

D. Petitioner does not contest the fact that his refund claims for each of the years at issue were not timely filed. Rather, petitioner contends that the period of limitations should not bar his claims because the format of the State income tax return misled him, primarily in that it did not have a specific reminder on its face stating that the pension income exclusion of Tax Law §

The Division's renewed objection and request to exclude such documents from the evidence, made in its post-hearing brief, is denied.

612(c)(3-a) was available to taxpayers who had reached the age of 59½. In this regard, petitioner asserts that when he retired in 1986, he was aware that he did not qualify for the exclusion because he was not then 59½ years old. However, petitioner maintains that he has suffered heart ailments, surgeries and strokes resulting in physical disability and mental impairment, that such disabilities left him unable to remember that he would be able to exclude pension income as of 1992 when he became 59½ years old, and that he did not otherwise become aware that the exclusion was available to him until after the closure of the period of limitations.

E. Petitioner's contentions must be rejected. First, New York State's income tax refund procedures, and specifically the three-year time limitation period within which a claim for refund must be made, have been consistently recognized as constitutionally sound (*see, Matter of Jones*, Tax Appeals Tribunal, January 9, 1997). In *Jones*, the taxpayer's refund claim was denied because it had not been filed within the period of limitations specified in Tax Law § 687(a), notwithstanding the fact that New York State had required the payment of State income tax on Federal pension income in violation of the United States Constitution. The Tribunal held that the three-year refund provision time limit of Tax Law § 687 provided taxpayers with a reasonable period to obtain refunds ("meaningful backward looking relief") while at the same time satisfying the State's need for sound fiscal planning (*see also, Matter of Burkhardt*, Tax Appeals Tribunal, January 9, 1997). The Tribunal's reasoning in *Jones* was confirmed by the Appellate Division in *Matter of Brault v. Tax Appeals Tribunal* (265 AD2d 700, 696 NYS2d 579), a subsequent case addressing State income taxation of Federal pension income. In *Brault*, the Court stated that "[i]nasmuch as Tax Law § 687(a) constitutes a permissible procedural protection, its application to petitioners' refund claim did not deprive them of due process" The three-year period of limitations to file a refund claim has also been recognized by the United

States Supreme Court as sufficient for due process requirements (*McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*, 496 US 18, 45, 110 L Ed2d 17, 41). Simply stated, the time limitation period established under Tax Law § 687(a) has been upheld as valid, petitioner failed to file his claims for refund within such period, and there is no basis in law to extend such period, including nonstatutory exceptions based on individual circumstances such as mental incompetence or disability (*see, U.S. v. Brockamp*, 519 US 347, 136 L Ed 2d 818, *rev'd U.S. v. Brockamp*, 67 F3d 260).

F. As to petitioner's specific claim concerning the lack of clarity in the tax return form, the relevant portions of the return require the inclusion of the "[t]axable amount of pensions and annuities" (Form IT-201 at line 11), and thereafter provide a subtraction for the "[p]ension and annuity income exclusion" (Form IT-201 at line 27). There is nothing inherently unclear or misleading in such sections. Each uses consistent language to identify the included and excludable income (here pension income), and the latter (subtraction) section is preceded by the specific advice "see instructions, page 12." Whether by lapse of memory, oversight, inadvertent omission, or failure to read the specifically referenced instructions for the subtractions portion of the return (which would have presumably cured any alleged lapse of memory), petitioner simply did not claim the available exclusion for pension income, and did not thereafter file a claim for refund to correct this failure within the statutorily allowable three-year time period.

Consequently, petitioner is time barred from obtaining a refund. The alleged shortcoming in the tax return form does not provide a basis to revive claims for refund which are barred by the period of limitations specified in law. It is not reasonable to hold the Division to a standard that a tax return, by itself, must be designed in such a manner that a taxpayer is alerted to every single facet of the Tax Law. The instruction booklet, in a basic sense, is designed for this

purpose and it is not unreasonable to expect a taxpayer who chooses to prepare his own returns to carefully read it.

G. Finally, petitioner asserts, relying on IRS Publication 556 (as referenced in the instructions to Federal Form 1040-X), that the statute of limitations for filing a claim for a Federal tax refund via an amended return may be suspended based on a taxpayer's disability. In fact, and apparently in response to *U.S. v. Brockamp (supra.)*, Congress enacted Internal Revenue Code ("IRC") § 6511(h), effective July 22, 1998. IRC § 6511(h) allows for suspension of the Federal statute of limitations period for filing a claim for credit or refund of Federal income tax under IRC § 6511(a) for any period of an individual taxpayer's life during which the taxpayer is unable to manage his or her financial affairs because of a medically determinable mental or physical impairment that can be expected to result in death, or has lasted for a continuous period of not less than 12 months. In turn, IRC § 6511(h)(2)(A) requires the submission of proof of the taxpayer's financial disability to the Internal Revenue Service. The Internal Revenue Service has issued Publication 556 which specifies the proof to be submitted by an individual who requests suspension of the period of limitations.²

² IRS Publication 556, pertaining to "periods of financial disability," provides as follows:

The period of limitations on credits and refunds (. . .) can be suspended during periods when you, an individual taxpayer, cannot manage your financial affairs because of physical or mental impairment that is medically determinable and either: (1) has lasted or can be expected to last continuously for at least 12 months, or (2) can be expected to result in death.

* * *

To claim that you were financially disabled, the following statements are to be submitted with the claim for credit or refund of tax:

- 1) A written statement signed by a physician, qualified to make the determination, that sets forth:
 - a) The name and a brief description of your physical or mental impairment,
 - b) The physician's medical opinion that your physical or mental impairment prevented you from managing you financial affairs,
 - c) The physician's medical opinion that your physical or mental impairment resulted in or can be expected to result in death, or that it has lasted (or can be expected to last) for a continuous period of not less than 12 months, and
 - d) To the best of the physician's knowledge, the specific time period during which you

H. Petitioner asserts that the Federal statute (IRC § 6511(h)) should apply for State purposes so as to suspend (or supercede) the New York State period of limitations with respect to his refund claims. Petitioner's argument is rejected. First, and dispositive with regard to this argument, IRC § 6511(h) is a Federal provision, and there is no parallel New York provision which provides for such an extension suspending the period of limitations. Further, petitioner did not file any amended Federal return for any of the years in issue. In fact, he had no need to make any such amended Federal filings, since his Federal income did not change and was not impacted at all by the New York specific change (the pension income exclusion) which occasioned the filing of the New York amended returns. Finally, the Federal suspension of the period of limitations on credits or refunds per IRC § 6511(h), as noted on the instructions to Form 1040-X and as explained in Publication 556, requires the submission of proof that the taxpayer is "physically or mentally unable to manage [his or her] financial affairs." Even assuming, for the sake of argument, that the Federal suspension provision applied, petitioner has not established that he falls within the criteria set forth in Publication 556. While petitioner has been found to be disabled for purposes of eligibility for social security benefits, there is no evidence in the record, as is required per IRC § 6511(h)(2)(A), to support a conclusion that petitioner is (or was during the years in question) "unable to manage his financial affairs." In fact, the thorough and intricate manner in which petitioner has presented his case in this forum militates against such a conclusion.

were prevented by such physical or mental impairment from managing your financial affairs. . . .

IRS Revenue Procedure 99-21 (1999-17 I.R.B. 18) sets forth the same statement of required proof in nearly identical language.

I. The petition of Stephen Charles Insalaco, Sr., is hereby denied and the denial of petitioner's claims for refund for the years 1992 through 1996, dated May 4, 2001, is sustained.

DATED: Troy, New York
February 13, 2003

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE