STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
RUSSELL L. GOODE	:	DETERMINATION DTA NO. 819349
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax under Chapter 17, Title 11 of the Administrative Code of the City of New York for the Years 1996 and 1997.	:	

Petitioner, Russell L. Goode, 600 Hylan Boulevard, Staten Island, New York 10305-2037, 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 and New York City personal income tax under Chapter 17, Title 11 of the Administrative Code of the City of New York for the years 1996 and 1997.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York on January 22, 2004 at 9:15 A.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Jacob Tiwary).

Since neither party herein elected to reserve time for the submission of post-hearing briefs, the three-month period for the issuance of this determination commenced as of the date the hearing was held.

ISSUES

I. Whether the Division of Taxation properly denied petitioner's claims for refund on the basis that said claims were filed after the expiration of the applicable statute of limitations for credit or refund.

II. Whether the claims for refund, if found to have been filed beyond the statute of limitations for refund, can nonetheless be allowed pursuant to the special refund authority set forth in Tax Law § 697(d).

FINDINGS OF FACT

1. Petitioner herein, Russell L. Goode, personally prepared and timely filed New York State and City resident personal income tax returns for the years 1996 and 1997. The 1996 return reported New York adjusted gross income of $50,469.03, which amount included a taxable IRA distribution of $10,000.00 and taxable pension and annuity income of $6,850.62. Petitioner's 1997 return reflected New York adjusted gross income of $83,542.58 and this amount also included a taxable IRA distribution of $34,450.00 and taxable pension and annuity income of $9,134.16.

2. For New York State and City income tax purposes, if a taxpayer has attained the age of 59 1/2, the first $20,000.00 of an IRA distribution and/or pension and annuity income is not taxable and, pursuant to Tax Law § 612(c)(3-a), is to be subtracted from Federal adjusted gross income in computing New York adjusted gross income.[1] Petitioner had attained the age of 59 1/2 prior to the years at issue and although he was entitled to exclude from taxation IRA and pension

[1] This modification reducing Federal adjusted gross income is commonly referred to as the "pension and annuity income exclusion" and this term will be used hereinafter in this determination.

and annuity income of $16,850.62 for 1996 and $20,000.00 for 1997, he failed to claim the exclusion on his original returns for these two years.

3. On February 15, 2002, petitioner filed amended New York personal income tax returns for the years 1996 through 2000 reducing reported New York adjusted gross income by the pension and annuity income exclusion allowed pursuant to Tax Law § 612(c)(3-a). The Division of Taxation ("Division") allowed petitioner the refunds, totaling nearly $6,000.00, for the years 1998 through 2000 and therefore these years are not at issue in this proceeding. However, with respect to the 1996 and 1997 tax years, the Division denied petitioner the refund he claimed for these two years on the basis that the amended returns were filed beyond the applicable statute of limitations for refund.

4. By letter dated May 16, 2002, the Division advised petitioner that the $1,940.00 refund claimed on his 1996 amended return was disallowed in full. Similarly, the $2,263.00 refund claimed on petitioner's 1997 amended return was also denied by the Division pursuant to a letter dated August 16, 2002. Petitioner disagreed with the Division's denial of his claims for refund for 1996 and 1997 and this proceeding ultimately ensued.

SUMMARY OF PETITIONER'S POSITION

5. Petitioner asserts that Tax Law § 686, which defines overpayment, and Taw Law § 687, which sets forth the time period in which a claim for credit or refund of an overpayment must be filed, do not apply in a situation such as this where an honest mistake was made in the preparation of the original returns. Petitioner maintains that Taw Law §§ 686 and 687 are applicable only to those taxpayers who intentionally overpay their taxes.

6. Alternatively, petitioner argues that the refunds claimed for 1996 and 1997 can be granted under the special refund authority of Taw Law § 697(d) since there is no question of fact

or law and that the overpayments at issue herein were erroneously or illegally collected or were paid under a mistake of facts.

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 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, 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. . . . (Emphasis added.)

B. Petitioner's assertion that Tax Law § 687(a) is applicable only to situations where a taxpayer has intentionally overpaid his or her taxes is without merit. A careful examination of Tax Law § 687(a) reveals that the Tax Law makes absolutely no distinction between overpayments which were intentional and those which were the result of an honest mistake. Whether an overpayment is the result of an intentional act or is due to an honest mistake, the time period set forth in the statute for the filing of a claim for credit or refund of such overpayment remains the same. In the instant matter, it is undisputed that petitioner's claims for refund for the 1996 and 1997 tax years were filed on February 15, 2002, a date which is clearly beyond the three-year statute of limitations for refund as set forth in Tax Law § 687(a). Both the Tax Appeals Tribunal, in ***Matter of Jones*** (January 9, 1997), and the Appellate Division, in ***Matter of Brault v. Tax Appeals Tribunal*** (265 AD2d 700, 696 NYS2d 579), have upheld the validity of applying the three-year statute of limitations for refund in cases with facts similar to those found in the instant matter.

C. Turning next to petitioner's assertion that the refunds should be granted pursuant to the special refund authority contained in Tax Law § 697(d), it is concluded that said section is not applicable to the facts of this case. 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.

In ***Matter of Wallace*** (Tax Appeals Tribunal, October 11, 2001), the Tribunal opined:

> 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; ***see also***, ***Wendel Foundation v. Moredall Realty Corp***., 176 Misc 1006, 29 NYS2d 451). 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; ***see also, Wendel Foundation v. Moredall Realty Corp.***, ***supra***). Petitioners knowingly, albeit mistakenly, reported MABSTOA retirement contributions as taxable New York State income for the years at issue. Petitioners' assumption that they were required to include such contributions as New York State taxable income was a mistake of law and not of fact.

The same result reached by the Tribunal in ***Wallace*** is required herein. Petitioner chose to prepare his own tax returns and was simply unaware of the law which provided for the $20,000.00 pension and annuity income exclusion. This is clearly a mistake of law and not of fact.

D. Simply stated, there is no basis in law to grant petitioner the relief he seeks. Although this conclusion may appear harsh, it must be noted that the law affords a taxpayer a substantial time period, in this case three years, to file a claim for credit or refund, and unfortunately for petitioner, he failed to file his claims for the years 1996 and 1997 within the time frame allowed

by law. Conversely, the Division, once a return has been filed, generally has the same three-year period to issue a notice of deficiency to a taxpayer asserting that additional taxes are due (Tax Law § 683[a]). Accordingly, I see no inequity in the current statutory scheme which holds a taxpayer to the same three-year period to file a claim for credit or refund.

E. The petition of Russell L. Goode is denied and the notices of disallowance dated May 16, 2002 and August 16, 2002 are sustained.

DATED: Troy, New York
March 18, 2004

/s/ James Hoefer
PRESIDING OFFICER