

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
DENNIS AND LORNA D. SHORT : DETERMINATION
for Redetermination of Deficiencies or for Refunds of New : DTA NOS. 819520
York State and New York City Personal Income Taxes : AND 819521
under Article 22 of the Tax Law and the Administrative :
Code of the City of New York for the Years 1995 through :
1997. :

Petitioners, Dennis and Lorna D. Short, 569 Lexington Avenue, Brooklyn, New York 11221, filed petitions for redetermination of deficiencies or for refunds of New York State and New York City personal income taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the years 1995 through 1997.

A small claims hearing was held before Arthur S. Bray, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York on July 21, 2004 at 1:15 P.M. Petitioner Dennis Short appeared *pro se* and on behalf of Lorna D. Short. The Division of Taxation appeared by Mark F. Volk, Esq. (Jacob Tiwary).

Since neither party herein elected to reserve time to file a post hearing brief, the three-month period for the issuance of this determination began as of the date the hearing was held.

ISSUE

Whether the Division of Taxation properly denied petitioners' claims for refunds for the years 1995 through 1997 on the ground that the claims were filed after the statute of limitations for refund had expired.

FINDINGS OF FACT

1. On February 11, 2002, petitioners filed their 1995 New York State Resident Income Tax Return. The return, which was dated February 9, 2002, reported income from wages, salaries and tips and stated that a refund was due in the amount of \$1,214.01.

2. On February 15, 2002, petitioners filed their 1996 New York State Resident Income Tax Return. The return, which was dated February 14, 2002, reported income from wages, salaries and tips and requested a refund in the amount of \$984.69.

3. Petitioners filed their 1997 New York State Personal Income Tax Return on February 11, 2002. As before, the return, which was dated February 9, 2002, reported income from wages, salaries and tips and requested a refund in the amount of \$1,228.87.

4. For each of the years in issue, petitioners' only payment of taxes was by tax withholding.

5. On or about September 27, 2002, the Division of Taxation issued a Notice of Disallowance which denied the refunds because the deadline for filing a claim for a credit or refund expired three years from the date that the return was due and that each of the returns at issue was filed more than three years from the date the return was due.

SUMMARY OF PETITIONERS' POSITION

6. At the hearing, petitioners acknowledged that they were late in filing their returns and submitted that the reason they were late was the mistaken belief that they had additional time to file their returns. Petitioners believe that the Division has taken a very harsh position and that at least some of the money should be returned to them.

CONCLUSIONS OF LAW

A. Tax Law § 687, entitled “Limitations on credit or refund,” provides, in pertinent part, 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. . . . 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. . . .

In the instant matter, petitioners’ only payment of taxes was by tax withholding. In accordance with Tax Law § 687(i), any income tax withheld from a taxpayer during the calendar year is deemed to have been paid on April 15th of the following year. Therefore, the taxes withheld for 1995, 1996 and 1997 were deemed paid on, respectively, April 15, 1996, April 15, 1997 and April 15, 1998. Accordingly, in order to be entitled to a refund of any of the tax withheld for 1995, 1996 and 1997, petitioners were required, pursuant to Tax Law § 687(a), to file such claims for a refund by, respectively, April 15, 1999, April 15, 2000 and April 15, 2001.

B. Petitioners realize that their claims for refund were untimely. However, they submit that it is unduly harsh to deny them all of the money to which they would otherwise be entitled if they had filed a timely claim for refund. While I believe that it is very unfortunate that petitioners did not file their claims in a timely manner, there is no provision in the Tax Law which allows for an extension of the statute of limitations for a refund in Tax Law § 687(a). In this vein, Tax Law § 687(e) specifically provides that no credit or refund can be allowed after the applicable period of limitations has expired unless the claim for credit or refund is filed within

the applicable period. This section further provides that any later credit or refund is void and no period of limitations specified in any other law is applicable to the recovery of any taxes imposed by Article 22 of the Tax Law.

C. The petitions of Dennis and Lorna D. Short are denied.

DATED: Troy, New York
September 16, 2004

/s/ Arthur S. Bray
PRESIDING OFFICER