

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MAX I. AND NELLIE J. LARSEN	:	SMALL CLAIMS
	:	DETERMINATION
	:	DTA NO. 819954
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 1997.	:	

Petitioners, Max I. and Nellie J. Larsen, 35-34 77th Street, Jackson Heights, New York 11372, 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 1997.

A small claims hearing was held before James Hoefler, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York, on January 19, 2005 at 1:15 P.M. Petitioners appeared *pro se*. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Jacob Tiwary).

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

ISSUE

Whether the Division of Taxation properly denied petitioners' claim for refund on the basis that it was filed beyond the applicable statute of limitations for refund.

FINDINGS OF FACT

1. In the early 1980s, petitioners herein, Max I. and Nellie J. Larsen, purchased 11 acres of unimproved real property in the State of Idaho. At the time that the land was purchased

petitioners intended to build a house on the 11-acre site and relocate to Idaho to be closer to their son. Before petitioners started construction on the house, their son moved back to New York State and therefore they abandoned their plan to build the house. In 1997, petitioners sold the 11 acres of unimproved real property in Idaho and realized a gain of \$52,983.11 from the sale.

2. Petitioners personally prepared and timely filed with the Division of Taxation (“Division”) their New York State and City resident personal income tax return for the 1997 tax year. On the return petitioners reported New York adjusted gross income of \$57,920.91, which amount included the capital gain of \$52,983.11 they received from the sale of the Idaho real property in 1997. Petitioners’ 1997 return reported that \$4,012.00 of New York State and City tax was due and said amount was paid by petitioners when the return was filed on or before April 15, 1998. Petitioners did not file an income tax return with Idaho for the 1997 tax year.

3. In July 2001, the Idaho State Tax Commission contacted petitioners regarding their Idaho income tax liability for the 1997 tax year. On December 7, 2001, the Idaho State Tax Commission issued a Notice of Deficiency Determination to petitioners for 1997 asserting that \$803.00 of Idaho income tax was due on the gain realized from the sale of the 11 acres of real property located in Idaho. Petitioners, on or about December 26, 2001, paid the \$803.00 of tax as asserted due by the Idaho State Tax Commission in its Notice of Deficiency Determination.

4. On or about January 17, 2002, petitioners sent to the Division a Form IT-112-R, New York State Resident Tax Credit, whereon they claimed that they were entitled to a resident tax credit of \$803.00 for income taxes paid to the State of Idaho. Petitioners sent a follow-up letter to the Division dated June 7, 2002 wherein they enclosed a copy of Form IT-112-R and inquired about the status of their \$803.00 refund. On November 18, 2002, petitioners submitted to the

Division Form IT-113-X, Claim for Credit or Refund of Personal Income Tax, for 1997 seeking a refund of \$803.00.

5. By letter dated May 30, 2003, the Division issued a Notice of Disallowance to petitioners wherein the \$803.00 refund sought for 1997 based on their claim for a resident tax credit for taxes paid to Idaho was disallowed in full. The Notice of Disallowance advised petitioners that:

New York State Tax Law does not permit us to allow your claim for refund. You should have filed your claim within three years from the date your return was filed or two years from the date the tax was paid, whichever is later.

Your 1997 return was filed on April 15, 1998. To receive a refund you should have filed your request by April 15, 2001.

SUMMARY OF PETITIONERS' POSITION

6. Petitioners maintain that when Idaho first asserted that taxes were due for 1997, representatives from the Idaho State Tax Commission informed them that they could file a claim with New York and obtain a refund. Petitioners assert that the Division's denial of their claim for refund as untimely is unfair and inequitable since it results in double taxation, i.e., the payment of taxes to two states on the gain realized from the sale of the Idaho real property.

CONCLUSIONS OF LAW

A. As relevant to this proceeding, Tax Law § 687, entitled "Limitations on credit or refund," provides 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. . . . (Emphasis added.)

B. In the instant matter, it is undisputed that petitioners' claim for refund for the 1997 tax year was, at the earliest, filed on January 17, 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. While I sympathize with petitioners' plight, there is simply no basis in law to grant them the relief they seek. In fact, Tax Law § 687(e) specifically provides that:

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 limitations 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.

Since a taxpayer usually has three years from the date a return is filed to submit a claim for refund and since the Division, once a return has been filed, generally has a like three-year period to issue a Notice of Deficiency to a taxpayer asserting that additional taxes are due, I see no inequity in the current statutory scheme which provides both parties with the same time frame. By establishing time frames for the issuance of notices of deficiency and the filing of claims for refund, the Tax Law provides both the State of New York and its taxpayers with the financial stability and security that comes from knowing that a specific tax year is closed.

D. Finally, by choosing to prepare their own tax returns, petitioners run the risk that the returns may not be properly prepared. Here, petitioners should have filed a 1997 income tax return with Idaho reporting a tax due of \$803.00 on the sale of the real property located in that State. Petitioners' New York return for 1997, if properly prepared, would have then claimed a resident tax credit of \$803.00 for the taxes paid to Idaho and this dispute would not have occurred. It was petitioners' apparent lack of familiarity with the tax laws of both New York and Idaho which produced this controversy and, as noted above, it was a risk they took when they chose to prepare their own returns.

E. The petition of Max I. and Nellie J. Larsen is denied and the Notice of Disallowance dated May 30, 2003 is hereby sustained.

DATED: Troy, New York
April 14, 2005

/s/ James Hoefler
PRESIDING OFFICER