

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**LEE H. BAUER, SR.** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of : DTA NO. 820137  
Personal Income Tax under Article 22 of the Tax Law :  
for the Year 1997. :

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Petitioner, Lee H. Bauer, Sr., 824 Old Preemption Road, Lyons, New York 14489, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1997.

On June 16 and 22, 2005, respectively, petitioner and the Division of Taxation by Christopher C. O'Brien, Esq. (Margaret T. Neri, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by September 30, 2005, which date commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Thomas C. Sacca, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether petitioner is entitled to a farmers' school tax credit for the year 1997.

***FINDINGS OF FACT***

1. On January 8, 2003, petitioner, Lee H. Bauer, Sr., and his wife, Constance M. Bauer, filed two claims for farmers' school tax credit on form IT-217 in the amounts of \$4,859.26 and

\$4,743.36 for the years 1997 and 1998, respectively.<sup>1</sup> For tax year 1997, petitioner computed the farmers' school tax credit as follows:

Total acres of qualified agricultural property	673
Less base acreage amount	<u>250</u>
Incremental acreage	423
Incremental acreage x 50%	<u>212</u>
Allowable acreage (673-212)	461
Allowable acreage/total acres	.6865
Allowable/total acres ratio x school taxes paid (\$7,078.31)	\$4,859.26

2. By cover letter accompanying the claims for credit filed January 8, 2003, petitioner stated:

I am writing to ask for a waiver of the statute of limitations for the 1997 and 1998 IT-217's because this credit was not widely publicized and I was not informed of it.

3. By a Notice of Disallowance dated September 19, 2003, the Division of Taxation ("Division") denied petitioner's claim for credit as untimely, explaining in relevant part:

The Tax Law provides for the granting of a refund or credit if it is applied for within three years from the time the return was required to be filed. In your case the 1997 claim would have had to be filed by 4-15-2001, and the 1998 claim by 4-15-2002. Both claims were received on 01-08-2003.

4. Petitioner and Constance M. Bauer timely filed their joint 1997 New York State resident income tax return on or before April 15, 1998. The return indicated personal income tax due of \$331.00.

5. On line 59 of the 1997 return filed by petitioner with the Division, petitioner claimed a farmers' school tax credit of \$4,045.00. Attached to the return were school tax bills indicating total school tax paid for the year 1997 of \$7,078.31. Contrary to the return's directions, a form

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<sup>1</sup>Although petitioner and his wife jointly filed the subject claims for credit and also jointly filed their New York returns for the years at issue, the petition in this matter was filed in the name of Lee J. Bauer, Sr., only. Hence, references to "petitioner" are to Lee J. Bauer, Sr.

IT- 217 was not attached to the return. The 1997 return claimed a net refund of \$3,714.00 (\$4,045.00-331.00). The Division does not dispute and in fact documentation submitted by the Division supports the conclusion that petitioner claimed the farmers' school tax credit of \$4,045.00 on the original timely filed 1997 return.

6. Following a review of petitioner's return, the Division allowed a farmers' school tax credit of \$822.82 and issued a refund to petitioner in the amount of \$491.82 on June 9, 1998, after subtracting the tax due of \$331.00. No explanation was provided as to how the \$822.82 figure was computed. In addition, no information was provided by the Division as to what action, if any, it took with regard to the remaining amount of petitioner's claimed farmer's school tax credit for 1997.

7. Petitioner and Constance M. Bauer timely filed their joint 1998 New York resident income tax return on or before April 15, 1999. Unlike the 1997 return, petitioner's 1998 return did not claim the farmers' school tax credit.

8. On February 8, 2005, the Division filed a motion for summary determination wherein it discussed the requirements of Tax Law § 687(a) that claims for credit or refund be filed within three years from the time the return was filed or two years from the time the tax was paid. The Division asserted that because petitioner did not file his claims for refund until January 8, 2003, or more than three years after the returns were filed, the Division properly disallowed the refund claims as untimely. It argued that there was no material issue of fact and that a determination in favor of the Division was mandated.

9. By order dated March 31, 2005, Administrative Law Judge Timothy J. Alston granted the Division's motion as to the year 1998 on the grounds that petitioner did not file his claim for refund within three years after the filing of his New York State personal income tax return for that year. However, the Administrative Law Judge denied the Division's motion as to the year

1997 on the ground that there were several questions of fact requiring a hearing in order to resolve the ultimate question of whether the Division properly issued a Notice of Disallowance with respect to petitioner's 1997 claim for credit. Among such questions were whether the return submitted with the motion papers was an accurate copy of petitioner's 1997 return; whether petitioner in fact claimed a farmers' school credit on his 1997 return as indicated by the copy in evidence; and whether such claim was granted.

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

A. Tax Law § 687(a) requires that a claim for credit be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever expires later. Petitioner's 1997 return was filed on or before April 15, 1998 and, pursuant to Tax Law § 687(i), his 1997 income taxes were deemed paid on April 15, 1998. As the 1997 return shows, and as the parties agree, petitioner claimed a farmers' school tax credit on his 1997 return. However, as the parties also agree, petitioner did not attach a Form IT-217, Claim for Farmers' School Tax Credit, to his return. Petitioner did file the Form IT-217 for the year 1997 on January 8, 2003, well beyond the statutory time period for filing a claim for credit or refund. It is the late filing of the Form IT-217 upon which the Division relies to deny the claim for credit or refund as untimely.

B. Informal claims for refund may be filed (*see, Matter of Rand*, Tax Appeals Tribunal, May 10, 1990) and the Tax Appeals Tribunal has held that in determining the validity of informal refund claims, it is appropriate to look to federal cases for guidance:

Tax Law section 687 is similar to section 6511 of the Internal Revenue Code and was intended to conform to federal law (Memorandum of State Department of Taxation and Finance, 1962 McKinney's Session Laws of NY, at 3536-3537). The federal courts have frequently ruled that a timely claim for refund can be made in an informal manner. A valid informal claim must have a written component that adequately appraises the taxing authority that a refund is requested and the tax year in question. It must contain enough information to enable the

taxing authority to begin an investigation of the matter, if it so chooses (*Wall Industries, Inc. v. U.S.*, 10 Cl Ct 82, 86-1 USTC ¶ 9438, at 84,028; *American Radiator and Standard Sanitary Corp. v. U.S.*, 318 F2d 915, 63-2 USTC ¶ 9525, at 89,179 [1963]). “[A] notice fairly advising the Commissioner of the nature of the taxpayer's claim ... will ... be treated as a claim where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period” (*United States v. Kales*, 314 US 186, 41-2 USTC ¶ 9785, at 1,041 [1941]) (*Matter of Rand, supra*).

In *Matter of Francis Greenburger & RS & P/WVII Limited Partnership* (Tax Appeals Tribunal, September 8, 1994), the Tribunal considered the requirements of an informal claim:

What constitutes an adequate or valid “informal refund claim” is not well settled. The sufficiency or adequacy of an informal refund claim is largely a question of fact (*see, United States v. Commercial Natl. Bank of Peoria* (874 F2d 1165, 89-1 USTC ¶ 9333)). Because courts created the concept of an informal claim or notice which may toll the statute of limitations, no specific rules address the requirements for such notice; only general principles exist (*United States v. Commercial Natl. Bank of Peoria, supra*). Other than the fact a taxpayer cannot rely on oral communication, courts often vary on which elements satisfy the requisite notice. When determining if a valid informal claim exists, courts will look to any statute or regulation in effect that addresses formal claims applications for the relevant tax (*see generally, United States v. Kales, supra*).

It appears clear that petitioner did file a written component that adequately apprised the Division that a refund was being requested for the tax year 1997 based upon the farmers’ school tax credit, as indicated on petitioner’s 1997 tax return. It contained enough information to enable the Division to begin an investigation of the matter, if it chose to do so (*Wall Industries, Inc. v. U.S., supra; American Radiator and Standard Sanitary Corp. v. U.S., supra*), as petitioner included with the return copies of the paid school tax bills. In fact, the Division did issue to petitioner a partial refund of the farmers’ school tax credit following the filing of the 1997 return and prior to petitioner’s submitting the Form IT-217. The filed 1997 tax return was sufficient to fairly advise the Division of the nature of petitioner’s claim and is therefore to be treated as a claim where formal defects and lack of specificity were remedied by petitioner by the filing of

the Form IT-217 after the lapse of the statutory period (*United States v. Kales, supra; Matter of Rand, supra*).

C. During the course of this proceeding, the Division presented documentary evidence that responded to the unanswered questions raised by the administrative law judge in his denial of summary determination for the year 1997. The documentation of the Division established that petitioner had claimed a farmers' school tax credit on his timely filed 1997 return, that the Division had partially granted such claim in the amount of \$822.82 and that a refund was sent to petitioner. The Division has not, however, explained why it granted only a portion of the refund claim, how it computed that refund, why the remainder was denied, what action, if any, it took with regard to the amount denied and how a portion of the refund is untimely when it had already granted a balance of the claimed refund. If the Division had sufficient information to approve and grant a part of the claimed refund, it appears inconsistent to now argue that the balance of the refund claim was untimely.

D. Tax Law § 606(n)(1) provides an agricultural property tax credit for allowable school district property taxes to a taxpayer who is an eligible farmer. The term "allowable school district property taxes" are those school district property taxes paid during the taxable year on qualified agricultural property, subject to the acreage limitation provided in paragraph 5. Such credit is allowed against the taxes imposed by Article 22 of the Tax Law for the taxable year reduced by the credits permitted by such article. If the credit exceeds the tax as so reduced, the taxpayer is to receive the overpayment, without interest, of the amount of such excess.

E. Tax Law § 606(n)(5), which deals with the acreage limitation, provides as follows:

(A) Eligible taxes. In the event that the qualified agricultural property owned by the taxpayer includes land in excess of the base acreage as provided in this paragraph, the amount of school district property taxes eligible for credit under this subsection shall be that portion of the school district property taxes which bears the same ratio to the total school district property taxes paid during the

taxable year, as the acreage allowable under this paragraph bears to the entire acreage of such land.

(B) Allowable acreage. The allowable acreage is the sum of the base acreage set forth below and fifty percent of the incremental acreage. The incremental acreage is the excess of entire acreage of qualified agricultural land owned by the taxpayer over the base acreage. Except as provided in subparagraph (C)<sup>2</sup> of this paragraph:

For taxable years beginning:	The base acreage is:
in 1997	100
after 1997	250

F. Applying the formula provided in Tax Law § 606(n)(5), the computation of petitioner's farmers' school tax credit is as follows:

Total acres of qualified agricultural property	673
Less base acreage amount	<u>100</u>
Incremental acreage	573
Incremental acreage x .50	287
Allowable acreage (673-287)	386
Allowable acreage/total acres	.5736
Allowable/total acres ratio x school taxes paid (\$7,078.31)	\$4,060.12

As petitioner has already received from the Division a refund of the farmers' school tax credit in the year 1997 of \$822.82, petitioner is entitled to an additional refund of \$3,237.30.

G. The petition of Lee H. Bauer, Sr. is granted to the extent indicated in Conclusion of Law "F"; and the Division of Taxation is directed to issue to petitioner a refund in the amount of \$3,237.30. Pursuant to Tax Law § 606(n)(1), no interest is due on this amount.

DATED: Troy, New York  
November 17, 2005

/s/ Thomas C. Sacca  
ADMINISTRATIVE LAW JUDGE

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<sup>2</sup>Subparagraph (C) concerns the base acreage of related persons which is not at issue in this matter.