

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>JOHN J. AND PEGGY J. LONG</b>	:	DETERMINATION
		DTA NO. 820826
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 1999 and 2000.	:	

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Petitioners, John J. and Peggy J. Long, 170 Church Street, Victor, New York 14564, 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 1999 and 2000.

On February 23, 2006, the Division of Taxation, by its representative, Christopher C. O'Brien, Esq. (Kevin R. Law, Esq., of counsel), filed a motion for an order granting summary determination to the Division of Taxation pursuant to section 3000.9(b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal on the ground that there are no material issues of fact. Petitioners, appearing *pro se*, filed no response to the Division of Taxation's motion for summary determination by the March 25, 2006 due date for their response, at which time the 90-day period for issuance of this determination commenced.

Upon the motion papers and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Catherine M. Bennett, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly denied petitioners' claims for refund under Tax Law § 687(a) for tax years 1999 and 2000.

***FINDINGS OF FACT***

1. Petitioners, John and Peggy Long, personally prepared and timely filed New York State resident personal income tax returns for the years 1999 and 2000 on April 15, 2000 and April 15, 2001, respectively. The 1999 return reported New York taxable IRA distributions in the amount of \$35,738.67, and the 2000 return reported New York taxable IRA distributions in the amount of \$46,138.00. On line 27 of the returns for each tax year, petitioners reported no New York subtraction for the pension and annuity income exclusion.

The 1999 return reflected New York adjusted gross income of \$39,791.95, New York State taxes of \$1,166.00, and a balance due in the amount of \$1,166.00. The 2000 return reflected New York adjusted gross income of \$46,345.00, New York State taxes of \$1,552.00, and a balance due in the amount of \$1,552.00.

2. On or about May 21, 2004, petitioners filed amended 1999 and 2000 New York State resident income tax returns, seeking refunds in the amount of \$895.00 and \$1,019.00, respectively, of the income tax resulting from their failure to claim the \$20,000.00 pension and annuity income exclusion as a subtraction pursuant to Tax Law §612(c)(3-a) on their original 1999 and 2000 returns.

3. The Division of Taxation ("Division") denied petitioners' refund claims by its correspondence dated January 21, 2005, as barred by the statute of limitations for claiming refunds.

4. Petitioners disagreed with the Division's denial of their claim for refund and filed a Request for Conciliation Conference before the Bureau of Conciliation and Mediation Services. By Conciliation Order dated August 26, 2005, the conferee sustained the Division's refund denial.

5. Petitioners thereafter challenged the denial by filing a petition with the Division of Tax Appeals, on or about November 15, 2005.

6. On or about February 23, 2006, the Division of Taxation filed this motion for summary determination. In support of its motion for summary determination, the Division submitted the affidavit of Stanley Szozda, a Division employee, whose responsibilities include reviewing and processing New York State personal income tax returns, conducting audits, resolving protests and preparing administrative records. Included with Mr. Szozda's affidavit was petitioners' 1999 and 2000 New York State income tax returns; a copy of petitioners' amended 1999 and 2000 returns; the Division's denial of refund correspondence; the petition with attachments; and the Division's answer.

7. Petitioners did not respond to the Division's motion for summary determination. The only counter argument made by petitioners suggests that they filed "marked-up" copies of their original tax returns on or about June 9, 2003, prior to the filing of their amended returns. No proof of mailing was submitted by petitioners.

8. The Division's records do not reveal receipt of any returns for 1999 and 2000 other than those originally filed and the amended returns described in Finding of Fact "2."

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

A. A motion for summary determination may be granted:

if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable

issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party (20 NYCRR 3000.9[b][1]).

Inasmuch as summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is arguable (*see, Glick & Dolleck v. Tri-Pac Export Corp.*, 22 NY2d 439, 293 NYS2d 93; *see also, Museums at Stony Brook v. Village of Patchogue Fire Dept.*, 146 AD2d 572, 536 NYS2d 177). If material facts are in dispute, or if contrary inferences may be reasonably drawn from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (*see, Gerard v. Inglese*, 11 AD2d 381, 206 NYS2d 879). Summary determination is a drastic remedy and should not be granted if there is any doubt as to the existence of a triable issue (*see, State Bank of Albany v. McAuliffe*, 97 AD2d 607, 467 NYS2d 944, *appeal dismissed* 61 NY2d 758).

The Division contends that there are no material issues of fact or law revealed in the record, and that it is entitled to a determination denying the petition as a matter of law. The essence of the Division's position is its assertion that petitioners have not complied with Tax Law § 687, which imposes limitations on credits or refunds of overpayments 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, 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. The Division does not dispute the applicability of the pension and annuity income exclusion to petitioners' 1999 and 2000 State income tax returns or the calculation of petitioners'

corresponding refunds resulting from the proposed amended returns. However, Tax Law § 687(a) requires that petitioners file their claims for refund within the later of three years from the time their return was filed or two years from the time the tax was paid. The only tax payments for 1999 and 2000 were made with the filing of the returns, on or about April 15, 2000 and April 15, 2001, respectively, the dates that petitioners' 1999 and 2000 personal income tax returns were due to be filed. The later of three years from filing or two years from payment is April 15, 2003 for the 1999 return and April 15, 2004 for the 2000 return. It follows that since petitioners did not file their amended returns claiming the refunds in issue until May 21, 2004, the Division properly denied the refunds (Tax Law § 687[a]). 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 petitioners, they failed to file their claims within the time frame allowed by law. By comparison, once a return has been filed, the Division 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]). There is 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.

C. Petitioners assert that the Division has exhibited a clear intent to deceive and defraud taxpayers by not referencing the pension and annuity exclusion and its applicability to IRA distributions on Line 27 of each year's tax returns. Quite the contrary, page 21 of the instruction booklets for both the 1999 and 2000 New York State resident income tax returns, intending to aid taxpayers in the preparation of their returns, clearly lists "periodic and lump-sum payments from an IRA, but not payments derived from contributions made after you retired" as pension and annuity income qualifying for the income exclusion, provided the age criteria is met. The

instructions pertaining to Line 27 are very clear, and therefore, petitioners' argument that the Division intended to deceive taxpayers is deemed without merit.

D. There being no material and triable issues of fact requiring a hearing, the Division's motion for summary determination is granted.

E. The petition of John J. and Peggy J. Long is denied and the Division's Notice of Disallowance of petitioners' claims for refund dated January 21, 2005, is sustained.

DATED: Troy, New York  
June 22, 2006

/s/ Catherine M. Bennett  
ADMINISTRATIVE LAW JUDGE