

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ROBERT J. TORTORICI	:	SMALL CLAIMS DETERMINATION DTA NO. 821002
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 2000.	:	

Petitioner, Robert J. Tortorici, 82 Kings Avenue, Atlantic Beach, New York 11509, 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 2000.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 400 Oak Street, Garden City, New York on October 18, 2006 at 1:15 P.M. Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Pierre Jason).

Since neither party 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.

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for credit or refund for the 2000 tax year on the basis that the claim was filed after the applicable statute of limitations for credit or refund had expired.

FINDINGS OF FACT

1. Petitioner, Robert J. Tortorici, was, prior to the year in question, a salaried employee of Dean Wittter Reynolds, Inc. who received wage income from which appropriate Federal, New York State and New York City taxes were withheld. Starting in early January 2000, petitioner became a self-employed equities trader associated with a day trading firm. No Federal, New York State and New York City taxes were withheld from the monies earned by petitioner as a self-employed equities trader.

2. In April 2001, petitioner met with his accountant for the purpose of having his 2000 Federal and New York State income tax returns prepared. The accountant was apparently unable to prepare the returns at that time, and therefore a request was submitted to the Division of Taxation ("Division") for an automatic four-month extension of time for petitioner to file his 2000 New York State income tax return. Petitioner also submitted an estimated tax payment of \$1,500.00, which payment was, pursuant to the Division's records, received on April 25, 2001. A second and final request for an extension of time to file petitioner's 2000 New York State income tax return was subsequently submitted by petitioner, or his accountant, wherein the due date for filing the 2000 return was extended to October 15, 2001.

3. On November 8, 2005, petitioner mailed to the Division his 2000 New York State resident personal income tax return. Said return claimed that petitioner had no New York State income tax due for the 2000 tax year and requested that the \$1,500.00 paid on or about April 25, 2001 be refunded to him.

4. On January 19, 2006, the Division issued a notice to petitioner denying in full the \$1,500.00 refund claimed on his 2000 income tax return. The basis for the Division's denial was

that the 2000 return, mailed on November 8, 2005, was filed after the applicable statute of limitations for credit or refund had expired.

SUMMARY OF PETITIONER'S POSITION

5. Petitioner does not dispute that his claim for a refund of \$1,500.00 as shown on his 2000 New York State income tax return was filed after the expiration of the applicable statute of limitations for refund. Petitioner maintains that soon after he became self-employed in 2000, he experienced a serious and debilitating dependency on alcohol, which dependency ultimately rendered him unable to perform most routine daily tasks, including the filing of income tax returns. Given his inability to file tax returns because of his dependency on alcohol, petitioner, in essence, argues that the statute of limitations should be waived in this matter.

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. . . . 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. . . .

B. For the 2000 tax year, petitioner's only payment of tax was via a single estimated tax payment made on April 25, 2001. Since petitioner had a valid extension of time to October 15, 2001 to file his 2000 return, any claim for credit or refund of the estimated tax payment made for 2000 would be required, pursuant to Tax Law § 687(a), to be filed by October 15, 2004. In the

instant matter, there is no dispute that petitioner filed his 2000 return on November 8, 2005. Accordingly, it is clear that petitioner's claim for a refund of \$1,500.00 for the 2000 tax year was filed after the statute of limitations for refund had expired.

C. While it may appear harsh that Tax Law § 687(a) places a three-year statute of limitations on taxpayers to claim a refund, it must be noted that 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. Therefore, it cannot be found that the statutory scheme is unfair since it provides both parties with the same three-year time frame. 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. 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. In *Matter of Nierenstein* (Tax Appeals Tribunal, April 21, 1988), the Tribunal opined that:

There is no authority for the Division of Taxation to approve the claim in a manner inconsistent with the Tax Law. Statutes of limitations are matters of law, enacted by the State Legislature for the purpose of guiding all persons who are, or may become parties to a legal proceeding, with respect to the timely filing of the various documents necessary to the particular program or proceeding involved.

The statute of limitations here is three years. Its purpose is to allow a reasonable time for taxpayers who have erroneously filed or paid taxes to realize their error and make application for refund. The State is thus put on notice that there is this three year period during which it may be liable for such claims. At the end of the period, the matter is settled. Anything less than this degree of certainty would make the financial operation of government difficult, if not impossible. In short, the statute of limitations

at issue here is a balance between the needs of the State with regard to the protection of its financial resources and the rights of taxpayers to correct their errors.

The rationale set forth in *Nierenstein* is equally applicable to the case at hand.

Accordingly, the Division is correct in its assertion that regardless of the merits of petitioner's claim for refund it must be denied as not timely filed.

D. While it is unfortunate that the \$1,500.00 overpayment made by petitioner for the 2000 tax year cannot be refunded to him because of the expiration of the statute of limitations for credit or refund, such conclusion is within the clear mandate of the statute. 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.

E. The petition of Robert J. Tortorici is denied and the Division's January 19, 2006 notice disallowing the \$1,500.00 claim for credit or refund for 2000 is sustained.

DATED: Troy, New York
January 4, 2007

/s/ James Hoefer
PRESIDING OFFICER