

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
STEPHEN AND PHYLLIS FRANCIOSA : SMALL CLAIMS
 : DETERMINATION
 : DTA NO. 821020
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. :

Petitioners, Stephen and Phyllis Franciosa, 2894 Harrington Avenue, Bronx, New York 10461, 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, 90 South Ridge Street, Rye Brook, New York on November 15, 2006 at 2:45 P.M. Petitioner Stephen Franciosa appeared *pro se* and for his spouse. The Division of Taxation appeared by Mark F. Volk, Esq. (Mac Wyszomirski).

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 petitioners' 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. Petitioners, Stephen and Phyllis Franciosa, timely filed their New York State resident personal income tax return on or before the extended due date of October 15, 2001. For the year at issue, petitioner Stephen Franciosa was a shareholder of a Michigan S-corporation known as Global Technology Ventures, Inc. (“Global”). Mr. Franciosa’s pro rata share of taxable income received from Global for the 2000 tax year, as reported on Federal Schedule K-1, totaled \$340,583.00. The \$340,583.00 of taxable income petitioners received from Global was included in New York State adjusted gross income on their 2000 New York State resident personal income tax return, and appropriate New York State income tax was paid on this income.

2. By letter dated October 25, 2004, the State of Michigan, Department of Treasury, corresponded with petitioner Stephen Franciosa stating that it:

has received information from the Internal Revenue Service, which identifies you as a shareholder of Global Technology Ventures Inc. As a nonresident shareholder of a Michigan S-Corporation you are required to file a Michigan income tax return (MI-1040) and report your distributive income from the corporation that is attributable to Michigan. Department records indicate no MI-1040's have been filed for tax years 2000 forward.

3. On or about January 27, 2005, petitioners filed a joint nonresident Michigan income tax return for the 2000 tax year reporting the \$340,583.00 of taxable income received from Global as income subject to tax by Michigan. Petitioners’ Michigan income tax return for 2000 calculated that \$13,313.00 of income tax was due Michigan on the Global income, and said amount, along with interest, was paid at the time the return was filed.

4. On January 31, 2005, four days after petitioners filed their 2000 nonresident Michigan income tax return, petitioners mailed to the Division of Taxation (“Division”) Form IT-201-X, Amended Resident Income Tax Return, for the 2000 tax year. Petitioners’ amended return for 2000 reported that they were due a refund of \$13,313.00 based on their claim of a resident tax

credit in the sum of \$13,313.00 for the income taxes they paid to Michigan on the \$340,583.00 of income received from Global, which income was taxed by both New York and Michigan.

5. On May 13, 2005, the Division issued a Notice of Disallowance to petitioners denying in full the refund claimed on their 2000 amended income tax return. The sole basis for the Division's denial was that the Tax Law requires a claim for credit or refund to be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever period is later, and that petitioners' amended return, mailed on or about January 31, 2005, was filed after the applicable statute of limitations for credit or refund had expired. The Division concedes that had petitioners made a timely claim for refund based on the assertion that they were entitled to a resident tax credit in the sum of \$13,313.00, such claim would have been allowed.

SUMMARY OF PETITIONERS' POSITION

6. Petitioners do not dispute that their claim for refund of \$13,313.00, as shown on their amended New York State income tax return for the 2000 tax year, was filed after the expiration of the applicable statute of limitations for refund. Petitioners assert in their petition that:

Denying us a refund for 2000 due to NYS law does not give appropriate consideration to a individual's inability to be familiar with the laws of another jurisdiction, especially when there is no reciprocal relationship (let alone consistent statutes of limitations) with other states. We do not believe that the spirit of NYS's statute is being usurped if it is interpreted liberally, but justly. We received a notice subsequent to NYS's statute but before Michigan's. We needed to ascertain that we did, in fact, have an obligation to Michigan, and amended returns with NYS were filed promptly. Why would NYS want to keep what is not rightfully its own. We had no way of knowing taxes were due to the State of Michigan. If NYS chooses to uphold its position, it is essentially cheating its own resident.

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, petitioners’ New York State tax liability, as reported on their original return, is, pursuant to Tax Law § 687(i), deemed to have been paid on April 15, 2001. Accordingly, petitioners’ claim for refund for 2000, dated January 31, 2005, was not made within two years of the date the tax was paid. Petitioners also had until October 15, 2004 to file a claim for credit or refund for the 2000 tax year since they had a valid extension of time to October 15, 2001 to file the 2000 return. Unfortunately, the January 31, 2005 claim for refund was also not filed within the three-year statute of limitations for refund.

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 petitioners' claim for refund it must be denied as not timely filed.

D. While it is unfortunate that the \$13,313.00 overpayment made by petitioners for the 2000 tax year cannot be refunded to them 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.

Although petitioners correctly note that the Division's position regarding this controversy is detrimental to residents of New York, I believe that the statute and case law is clear and that legislative action would be required to afford petitioners the relief they seek. Petitioners were apparently required to file a Michigan income tax return for 2000 and, had they done so in a more timely manner, this controversy would have never occurred. It was petitioners' lack of knowledge of the Michigan taxing statutes which produced this situation and it is well settled that ignorance of the law cannot be used as an excuse to circumvent the law.

E. The petition Stephen and Phyllis Franciosa is denied and the Division's Notice of Disallowance dated May 13, 2005 is sustained.

DATED: Troy, New York
February 8, 2007

/s/ James Hoefler
PRESIDING OFFICER