

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
THOMAS R. FLORY	:	DETERMINATION
	:	DTA NO. 821076
for Revision of a Determination or for Refund of	:	
Sales and Use Taxes under Articles 28 and 29 of the	:	
Tax Law for the Period June 1, 1998 through August	:	
31, 1998.	:	

Petitioner, Thomas R. Flory, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1998 through August 31, 1998.

On November 23 and 30, 2007, respectively, petitioner, appearing pro se, and the Division of Taxation, by Daniel Smirlock, Esq. (Lori P. Antolick, Esq., of counsel), consented to have this controversy determined upon the submission of documents without a hearing. All documentation was to be submitted by December 21, 2007, which date began the six-month period for the issuance of this determination. After due consideration of the entire record, Thomas C. Sacca, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner filed a timely claim for refund of sales and use taxes erroneously paid on the purchase of a used mobile home.

FINDINGS OF FACT

1. In May 1998, petitioner, Thomas R. Flory, purchased a used mobile home in Staten

Island, New York. Upon registering the mobile home with the Department of Motor Vehicles on June 5, 1998, petitioner paid sales tax in the amount of \$3,465.00.

2. When selling the mobile home in 2005, petitioner learned that sales tax is due only upon the purchase of a new mobile home. Subsequently, petitioner sent a letter to the Division of Taxation requesting a refund of the \$3,465.00 of sales tax paid. Although the letter was undated, it was sent in an envelope with a United States Postal Service postmark of March 11, 2005 and received by the Division on March 15, 2005. The Division created a refund claim dated March 15, 2005.

3. On May 20, 2005, the Division of Taxation sent a letter to petitioner denying his refund claim. The letter stated, in part, as follows:

Your claim for a refund is being denied in full.

The Sales and Use Tax Law requires that a refund application be filed within three years from the date the taxes are payable to the Tax Department. Sales tax is deemed to be payable on the 20th day of the month following the quarter in which the sale/purchase was made. Your claim was filed on 3/15/05. Based on the three year statute of limitations, your claim can include periods beginning on 12/01/01.

Tax payable prior to that date cannot be refunded.

CONCLUSIONS OF LAW

A. Tax Law § 1115(a)(23) and 20 NYCRR 544.3(a)(4) provide that the sale of a used mobile home is exempt from the imposition of the tax imposed by Tax Law §§ 1105 and 1110. It is unquestioned that petitioner erroneously paid sales tax in the amount of \$3,465.00 upon his purchase of the used mobile home in 1998.

B. Tax Law § 1139 provides that a claim for credit or refund of sales tax must be filed within three years of the date the tax was payable (Tax Law § 1139[a]) or within three years of

the date the return was filed or two years from the time the tax was paid, whichever of such periods expires the later (Tax Law § 1139[c]). There is no dispute in the instant matter that a claim for credit or refund of the \$3,465.00 paid on June 5, 1998 was required to be filed on or before September 20, 2001. Petitioner does not dispute that his application for refund of sales or use tax, which was mailed on March 11, 2005 and received by the Division on March 15, 2005, was filed after the statute of limitations for refund had expired.

C. While it may appear harsh that Tax Law § 1139(f) places a three-year statute of limitations on taxpayers to claim a refund, it must be noted that the Division generally has a like three-year period to issue a notice of determination 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 Nierenstein* (Tax Appeals Tribunal, April 21, 1988), and the Appellate Division, in *Matter of Sheppard-Pollack v. Tully* (64 AD2d 296, 409 NYS2d 847 [1978]), have upheld the validity of applying a three-year statute of limitations for refund. By establishing time frames for the issuance of notices of determination 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 or period is closed. In *Matter of Nierenstein*, 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.

C. The petition of Thomas R. Flory is denied and the Division's letter dated May 20, 2005 denying petitioner's claim for refund in full is sustained.

DATED: Troy, New York
May 22, 2008

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE