STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **ARTHUR N. AND MARILYN H. MARTIN** 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 1996 and 1997.[1]	:	SMALL CLAIMS DETERMINATION DTA NO. 821123

Petitioners, Arthur N. and Marilyn H. Martin, 52 Speir Drive, South Orange, New Jersey, 07079, 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 1996 through 1998.

A small claims hearing was held before Catherine M. Bennett, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on April 12, 2007, at 10:30 A.M. Petitioner Arthur Martin appeared *pro se* and on behalf of his wife, Marilyn Martin. The Division of Taxation appeared by Daniel Smirlock, Esq. (Mac Wyszomirski). Petitioners reserved time to submit additional documents by May 14, 2007, thus the three-month period for the issuance of this determination commenced as of that date.

ISSUE

Whether the Division of Taxation properly denied refunds for tax years 1996 and 1997.

[1] Although the years initially petitioned were 1996 through 1998, the parties agreed that the payments made by petitioner that are the subject of petitioners' refund claim were applied only to the years 1996 and 1997. Thus, 1998 is not at issue herein.

FINDINGS OF FACT

1. Petitioners, Arthur and Marilyn Martin were New Jersey residents for the years in issue.

2. Marilyn Martin worked in New York City for Sanofi-Synthelabo ("Sanofi"). Her first year of employment with Sanofi occurred in 1996, and she was employed there for the years in issue.

3. The parties in this matter agree, and documentation supports, that Sanofi erred in setting up Mrs. Martin's payroll records and withheld New Jersey state withholding tax, rather than New York State and local withholding taxes for 1996 and1997. Mrs. Martin's forms W-2 for both 1996 and 1997 reflected this error.

4. In order to report Mrs. Martin's New York source wages, petitioners filed New York nonresident income tax returns for the years in issue.

5. Petitioners late filed their 1996 and 1997 New York State nonresident income tax returns during October 1999. The returns showed tax due in the amounts of $3,043.00 for 1996 and $6,777.00 for 1997. The only payment made with the returns was in the amount of $1,500.00, paid in October 1999 toward the 1996 tax liability. The returns applied only the New York City local tax withheld toward petitioners' New York tax liability.

6. Petitioners also filed a Form NJ-1040, State of New Jersey Income Tax - Resident Return, for each of the years in issue. The only credits for income taxes paid to other jurisdictions recorded on the New Jersey returns as filed for 1996 and1997 were for the local taxes paid to New York City in those years.

7. As a result of petitioners' late filing of their returns and late payment of tax or failure to pay tax with respect to the 1996 and 1997 New York nonresident income tax returns, the Division of Taxation ("Division") issued notices and demands for the tax due, dated November

26, 1999 and January 10, 2000, asserting additional tax due in the amount of $1,542.57 (having applied the $1,500.00 payment) and $6,777.00, respectively, plus interest and penalties.

8. When petitioners were notified by the Division that taxes were due for the years in issue, petitioners paid them to clear any liabilities, without attempting to verify the amounts claimed to be due by the Division. In addition to the payment made with the filing of the 1996 return in 1999, petitioners satisfied their New York income tax liabilities for 1996 and 1997 by payments made during March and April 2000 . The following payments were made by petitioners:

Amount Paid	Date Paid	Return to which payment was applied
$1,500.00	10/16/99	1996 tax return
$3,415.20	2/24/00	1996 tax return
$420.00	3/6/00	1997 tax return
$9,704.05	4/10/00	1997 tax return
Total $15,039.25		

9. After making such payments, Mrs. Martin sought the advice of her accountant to verify that she owed the amounts she had actually paid. The accountant informed her that she had not received credit on her New York tax returns for State withholding tax for the years in issue. Mrs. Martin then approached her employer to determine why she did not receive credit for withholding taxes she had paid.

10. In late 2000, both Sanofi and petitioners learned that Sanofi had erroneously remitted Mrs. Martin's withholding taxes to New Jersey, her state of residence, instead of New York where they should have been paid. Sanofi filed amended payroll returns with the State of New Jersey in February 2001, seeking a refund of the taxes paid to New Jersey in error. Sanofi

notified the Division of its error by March 2001. At that time, Sanofi cleared its record with the Division by paying over Mrs. Martin's withholding taxes for which she did not receive credit. On or about March 6, 2001 payments were made by Sanofi in the following increments: $1,117.33, $1,016.94, $1953.62, $945.14 and $909.24 (totaling $5,942.27), covering five of the six quarters[2] during 1996 and 1997 when Mrs. Martin was employed by Sanofi.

11. In September 2001, Sanofi sent to the Division corrected W-2s for both 1996 and 1997 and requested clarification of Mrs. Martin's tax account due to the corrections made, since Mrs. Martin had already paid the amounts which Sanofi duplicated by correcting its payment records with the Division. Petitioners maintained contact with the Division in order to ensure that Mrs. Martin had been given proper credit for the taxes paid by Sanofi, and to pursue Mrs. Martin's payment as a refund. Complicating this matter was the fact that when Sanofi sent the withholding taxes to the Division on Mrs. Martin's behalf, it neglected to associate the amounts with her social security number, and initially the funds paid by Sanofi to the Division could not be located. Petitioners continued pursuing a refund of the duplication of payments.

12. In October 2004, petitioners' representative corresponded with the Division still attempting to clear petitioners' tax liabilities for 1996 and 1997. The Division acknowledged this correspondence on November 22, 2004 (which referenced tax year 1996), and petitioners were also informed that they would be notified of the resolution of the matter in issue and that no further correspondence was necessary. During additional contact with the Division, petitioners were informed that if they could locate canceled checks and routing numbers proving both they and Sanofi had satisfied the liabilities, they would be able to make a claim for refund. Petitioners

[2] The record revealed that the payment for one quarter was erroneously sent to New Jersey.

located the checks and provided proof of payment to the Division. With this information the Division, on or about April 18, 2005, was able to confirm the payments made by Sanofi on behalf of Mrs. Martin. The Division then informed petitioners that the statute of limitations on the refund claim had run and they would not be able to seek the return of the duplicate payment.

13. Petitioners then officially filed a claim for refund, Form IT-113X, on May 10, 2005 requesting a refund in the amount of $15,039.05 for payments made by Mrs. Martin that also included the duplicate payments made by her employer to New York State on March 6, 2001.

14. The Division denied the request for refund as untimely in a Notice of Disallowance dated June 17, 2005.

15. At the small claims hearing, it was agreed by the parties that if petitioners prevailed, they were not entitled to a refund of $15,039.25, since some of this amount represented New York State income tax due on late filed and late paid returns for 1996 and 1997, but rather they may be entitled to a portion of such amount equal to the withholding tax error by Sanofi (i.e., $5,942.27**).**

SUMMARY OF THE PARTIES' POSITIONS

16. Petitioners maintain that the withholding taxes for the years in issue were paid twice: once by Mrs. Martin when notified by New York of the tax deficiencies for those years, as well as by petitioner's employer once it realized that it had erroneously sent the withholding taxes to New Jersey instead of New York. To the extent of such duplication, petitioners believe they should be entitled to a refund of such amount.

17. The Division argues that petitioners' claim for refund was made beyond the statute of limitations since it did not occur within three years of the filing of the returns or within two years of payment, and should be denied.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law § 687(a), a limitations period is imposed upon taxpayers who wish to claim a refund of an overpayment of income tax as follows:

> 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 . . . .

B. The reasoning for the limitation period with regard to refund claims was discussed in ***Matter of Nierenstein*** (Tax Appeals Tribunal, April 21, 1988), where the Tribunal explained:

> 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 (emphasis added).

C. In this matter, petitioners filed their formal claim for refund for 1996 and 1997 on May 10, 2005, which they agree, under a strict construction of the law, was well beyond the three-year statute of limitations from the date the returns were filed, and beyond two years from the time the tax was paid by either Mrs. Martin or Sanofi. The Division maintains that a strict construction of these rules should apply to this matter and the refund disallowance should be sustained. In my view, however, this matter begs some additional consideration under various theories.

Referring above to the Tribunal's discussion of the reasoning behind the statute of limitations in matters of this type, the discussion focuses exclusively on the existence of the

statute so that the State is put on notice that it may have a claim to settle, in order to have a reasonable degree of certainty as to what funds it will have with which to operate. Clearly, well before petitioners filed their formal claim for refund, the State was put on notice numerous times within the statute of limitations that a duplication in payments was potentially made and that petitioners viewed some portion of their tax payments as eligible for a refund. In October 1999, the returns for 1996 and 1997 were filed. In March and April 2000, petitioners paid the balances on their New York nonresident returns for 1996 and 1997. The issue then is whether by October 2002 (three years from the date of the filing of the returns, which falls later than two years from the date of petitioners' payments in March and April 2000), the Division was put on notice that petitioners would seek a return of funds for the tax years represented by such filings.

Sanofi notified the Division of its error in March 2001 and made payments (totaling $5,942.27) to New York for Mrs. Martin's withholding taxes that had been erroneously sent to New Jersey. Again in September 2001, Sanofi was in contact with the Division when the company submitted corrected W-2s on her behalf and requested clarification of her account vis-a-vis the duplication of payments. Additionally, petitioners continued their contact with the Division for the purpose of clearing up this matter. There is no doubt that the Division was placed on notice in this case. Such notice clearly represented informal claims, of which the Division was made aware, that petitioners believed there was a duplication of payments to petitioners' detriment. Certainly, such claims, later perfected by petitioners' filing of Form IT-113X, are sufficient to conclude that petitioners put the Division on notice within the statute of limitations and within the spirit of the law governing refund claims.

D. This matter was qualified in dollar amount for a small claims hearing in the Division of Tax Appeals. Small claims hearings are informal and seek a resolution of tax matters by a just

and equitable determination (Tax Law § 2012). Petitioners' arguments throughout are based on the principles of fairness and equity and that a refund of the duplicate taxes paid to New York State under this unique set of facts and circumstances is a means of avoiding the unjust enrichment of the Division at their expense. Tax Law § 2012 allows a presiding officer to hear and receive the evidence and testimony necessary for a just and equitable determination, and in my opinion, granting petitioners the relief they seek, limited to the amount of taxes duplicated and paid within the statute, results in the equity called for herein.

E. Lastly, petitioners raise the applicability of the special refund authority of Tax Law § 697(d), which states:

> Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or *paid by such taxpayer or other person under a mistake of facts*, pursuant to the provisions of this article, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller (emphasis added).

The facts of this case are undisputed. When Mrs. Martin made the payments to New York in the amount of $15,039.25, she did so under the impression that she was paying a tax deficiency for 1996 and 1997, including late-filing penalties and interest. Although she may have mistakenly believed that her withholding taxes had already been taken into account, the record supports the conclusion that Mrs. Martin became aware of this mistake only after the payments were made, when she consulted with her accountant. There is no clear proof that she believed the facts to be different than they actually were. Thus, at the time of the tax payments, the Division, according to its records properly collected an amount then due, and Mrs. Martin paid such amounts, presumably believing that such amounts were due and owing, having filed

her returns with New York late and without payment, except for the $1,500.00 paid on the 1996 liability. Her payments were not made under a mistake of facts. Accordingly, petitioners' claim for refund under the special refund authority has no merit.

F. On the basis that informal claims had been made placing the Division on notice of a potential duplication of payments, under the principles of equity provided for in Tax Law § 2012, and under the particular and somewhat unusual set of facts herein, petitioners' refund claim, limited to the withholding amounts totaling $5,942.27, is granted with interest accrued from April 18, 2005, the date New York State was able to confirm that the payments it received from Sanofi should be credited to Mrs. Martin.[3]

G. The petition of Arthur and Marilyn Martin is granted to the extent that a refund is granted as indicated in Conclusion of Law "F," and the Notice of Disallowance dated June 17, 2005 is modified accordingly.

DATED: Troy, New York
August 10, 2007

/s/ Catherine M. Bennett
PRESIDING OFFICER

[3] Although the Division had possession of the payments from Sanofi on or about March 6, 2001, Sanofi neglected to properly identify them in order to be sure Mrs. Martin received credit. The Division should not be required to pay interest for the time frame the payments could not be associated with her account due to the error of the employer.