

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JOSEPH AND ELEANOR GOONAN	:	SMALL CLAIMS DETERMINATION DTA NO. 821265
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax pursuant to the Administrative Code of the City of New York for the Year 2001.	:	

Petitioners, Joseph and Eleanor Goonan, 484 Minnieford Avenue, Bronx, New York 10464, 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 and New York City personal income tax pursuant to the Administrative Code of the City of New York for the year 2001.

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 May 16, 2007 at 12:30 P.M. Petitioners appeared by Catherine Mazzaro, Tax Preparer. The Division of Taxation appeared by Daniel Smirlock, Esq. (Lawrence Hallock).

Since neither party reserved time to file a post-hearing brief, the three-month period for the issuance of this determination commenced as of the date the small claims hearing was held.

ISSUE

Whether the Division of Taxation properly denied petitioners' claim for credit or refund for the 2001 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, Joseph and Eleanor Goonan, filed with the Division of Taxation (“Division”) their 2001 New York State and City resident personal income tax return on or before the April 15, 2002 due date. The combined New York State and City tax due as shown on petitioners’ return was paid via \$4,447.00 of New York State and City tax withheld from wages, \$2,600.00 in estimated tax payments and a \$59.00 payment made with the return when filed.

2. New York adjusted gross income as reported on petitioners’ original 2001 personal income tax return totaled \$99,646.00. Included in this amount was pension income of \$29,298.00 that petitioner Joseph Goonan received as a retired New York City police officer. Petitioners’ 2001 personal income tax return did not exclude from New York adjusted gross income the \$29,298.00 of pension income as permitted by Tax Law § 612(c)(3)(i).

3. When petitioners’ tax preparer was completing their 2004 New York State and City resident personal income tax return in late March or early April of 2005, she became aware of the fact that Mr. Goonan’s pension income as a retired New York City police officer was not subject to New York State and City personal income tax. Accordingly, on May 5, 2005, petitioners filed amended New York State and City resident personal income tax returns for the 2001, 2002 and 2003 tax years wherein Mr. Goonan’s pension income was excluded from New York adjusted gross income. The amended returns each sought a refund of the New York State and City personal income tax paid on Mr. Goonan’s pension income for the years 2001, 2002 and 2003.

4. The Division granted petitioners the refunds they claimed for the years 2002 and 2003. However, with respect to the 2001 tax year, the Division, on November 11, 2005, issued a Notice of Disallowance to petitioners denying in full the \$2,635.00 refund claimed on their 2001 amended personal income tax return. The basis for the Division’s denial was that the 2001

amended return, received on May 5, 2005, was filed after the applicable statute of limitations for credit or refund had expired.

SUMMARY OF PETITIONERS' POSITION

5. Petitioners do not dispute that their 2001 amended personal income tax return was filed on May 5, 2005 and that the applicable statute of limitations for refund for the 2001 tax year expired on April 15, 2005, thus making their claim for refund for said year late by 17 days. Petitioner Joseph Goonan served in the U.S. Navy and after his discharge he joined the Army Reserves. Mr. Goonan remained a reservist for approximately 28 years, until his retirement from the reserves in March 2005. In March 2003, Mr. Goonan was called to active duty and he spent the next two years serving our country in the capacity of national security. During his two-year call to active duty, petitioner Joseph Goonan lived in Washington, D.C. and worked exclusively at the Pentagon. Petitioners maintain that Mr. Goonan's extensive duties while on active duty prevented the timely filing of the claim for refund for the 2001 tax year and that given their unique situation they seek leniency with respect to the April 15, 2005 filing deadline.

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 2001 tax year, petitioners paid tax via taxes withheld from wages, estimated tax payments and a \$59.00 payment made at the time the original 2001 personal income tax return was filed on or before April 15, 2002. Pursuant to Tax Law § 687(i) all of the payments of tax petitioners made for 2001 are deemed to have been paid on April 15, 2002. Accordingly, petitioners' claim for refund for 2001, dated May 5, 2005, was not made within three years of the date the tax was paid and thus it is clear that petitioners' claim for a refund for the 2001 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 petitioners' claim for refund it must be denied as not timely filed.

D. While it is unfortunate that the \$2,635.00 overpayment made by petitioners for the 2001 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.

E. The petition of Joseph and Eleanor Goonan is denied and the Division's Notice of Disallowance dated November 11, 2005 denying petitioners' \$2,635.00 claim for credit or refund for the 2001 tax year is sustained.

DATED: Troy, New York
August 9, 2007

/s/ James Hoefer
PRESIDING OFFICER