

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
EDWARD LEVINE	:	DETERMINATION
	:	DTA NO. 821413
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Years 1995 through	:	
2001.	:	

Petitioner, Edward Levine, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1995 through 2001.

A hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on July 10, 2007 at 10:30 A.M., which date began the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Daniel Smirlock, Esq. (Kevin R. Law, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly denied petitioner's claims for credit or refund of personal income tax for the 1995 through 2001 tax years on the basis that the claims were filed after the applicable statute of limitations for credit or refund had expired.

FINDINGS OF FACT

1. Petitioner, Edward Levine, timely filed with the Division of Taxation (Division) his 1995 through 2001 New York State resident personal income tax returns.

2. During the period 1993 through 1995, petitioner suffered from severe depression. He lost both his parents during this period of time and was forced to retire from employment with the Internal Revenue Service on disability income. At the time of his retirement, petitioner had not yet reached the age of 62.

3. In completing his federal income tax returns for the years at issue, petitioner included his disability income in taxable income as required by the Internal Revenue Code, which provided that if a taxpayer retired on disability, payments received are fully taxable as ordinary income until the taxpayer reaches minimum retirement age. Petitioner erroneously assumed that New York State treated disability income in the same way that the Internal Revenue Service did and included such income in his New York State adjusted gross income for the years at issue. According to petitioner, the instructions for Form IT-201 also led to his erroneous conclusion. Petitioner's 1995 through 2001 personal income tax returns did not exclude from New York State adjusted gross income the disability pension income received as permitted by Tax Law § 612(c)(3-b)(i).

4. In early 2006, while preparing his New York State personal income tax return for 2005, petitioner realized that his disability income received as a result of his retirement from the Internal Revenue Service was not subject to New York State personal income tax. Accordingly, on February 10, 2006, petitioner filed amended New York State resident personal income tax returns for the years 1995 through 2001 wherein Mr. Levine's disability income was excluded from New York adjusted gross income. The amended returns each sought a refund of the New York State personal income tax paid on Mr. Levine's disability income for the years 1995 through 2001. The total amount requested was \$2,782.00.

5. The Division, on April 21, 2006, issued a Notice of Disallowance to petitioner denying in full the \$2,782.00 refund claimed on his 1995 through 2001 amended personal income tax returns. The basis for the Division's denial was that the amended returns, received on February 10, 2006, were filed after the applicable statute of limitations for credit or refund had expired.

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, the last year at issue, petitioner paid tax via taxes withheld from wages and estimated payments 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 petitioner made for 2001 are deemed to have been paid on April 15, 2002. Accordingly, petitioner's claim for refund for 2001, dated February 10, 2006, was not made within three years of the date the tax was paid and thus it is clear that petitioner's claim for refund for the 2001 tax year was filed after the statute of limitations for refund had expired. As the personal income tax returns for the years 1995 through 2000 were filed and the tax paid prior to the 2001 tax year return and payment, and petitioner's refund claims for these years were also filed on February 10,

2006, it is clear that petitioner's claims for refund for the 1995 through 2000 tax years were also 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 similar 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 [1999]), have upheld the validity of applying a three-year statute of limitations for refund. 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 claims for refund, they must be denied as not timely filed.

D. While it is unfortunate that the refunds claimed by petitioner for the 1995 through 2001 tax years cannot be granted 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. Petitioner argued that he was prevented from filing his original returns in a correct manner and timely filing his amended returns in a timely manner due to mental illness.

Unfortunately, there are no exceptions in the Tax Law which allow for consideration of individual circumstances. Essentially, petitioner seeks an equitable tolling of the statute of limitations set forth in Tax Law § 687(a) based on his disabilities. However, this notion of an equitable tolling was rejected by the United States Supreme Court when interpreting Internal Revenue Code (IRC) § 6511, which provides statutory time limitations for filing refund claims similar to Tax Law § 687(a). (*United States v. Brockamp*, 519 US 347 [1997].) In *Brockamp*, the Court held that the statutory time limitations for the filing of a refund claim could not be tolled for nonstatutory equitable reasons. In that case, the petitioner had argued that senility had caused the delay in filing the claim and that the statutory time limitation should be extended because of the existence of a mental disability. The Court rejected the petitioner's contentions,

saying that there was neither an explicit nor implied equitable tolling exception in IRC § 6511. Likewise, there is no reason to interpret the provisions of Tax Law § 687(a) differently, notwithstanding very compelling personal reasons.

F. Finally, petitioner contends that the New York State instructions for Form IT-201 contributed to his misinterpretation of the Tax Law.

In the present matter, New York adjusted gross income did not include disability payments received by an employee of the United States (Tax Law § 612 [c][3-b][i]). Petitioner erroneously included these payments in the computation of his New York adjusted gross income for the years at issue and now seeks a refund of these amounts. “Ignorance of the law is not an excuse; a taxpayer is charged with knowledge of the law” (*Genesee Brewing Co. v. Village of Sodus Point*, 126 Misc 2d 827, 482 NYS2d 693, 700 [1984], *affd* 115 AD2d 313, 496 NYS2d 720 [1985]). Therefore, petitioner cannot rely on his misinterpretation of the Tax Law as a rationale for allowing his late-filed claims for refund.

G. The petition of Edward Levine is denied, and the Division of Taxation’s Notice of Disallowance, dated April 21, 2006, is sustained.

DATED: Troy, New York
January 10, 2008

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE