

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>JOHN J. AND LAURA GUNDERSEN</b>	:	SMALL CLAIMS DETERMINATION DTA NO. 821517
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 Years 1998, 1999 and 2001.	:	

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Petitioners, John J. and Laura Gundersen, 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 years 1998, 1999 and 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 November 14, 2007 at 2:30 P.M. Petitioner John J. Gundersen appeared pro se and also for his spouse. The Division of Taxation appeared by Daniel Smirlock, Esq. (Susan Parker).

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' claims for credit or refund for the 1998, 1999 and 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. On August 23, 2005, petitioners, John J. and Laura Gundersen, filed with the Division of Taxation (Division) their New York State and City resident personal income tax returns for the years 1998, 1999, 2000, 2001, 2002, 2003 and 2004. Only the years 1998, 1999 and 2001 are at issue in this proceeding. In a letter forwarded with the seven returns, also dated August 23, 2005, petitioner Laura Gundersen stated that the “returns were done but not mailed. . .” and that “I (Laura) have to take responsibility for not mailing, I am currently undergoing treatment for depression.”

2. Petitioners’ returns for 1998, 1999 and 2001 each claimed a refund and the following table reflects how the respective refund was computed:

ITEM	1998	1999	2001
Total NYS and NYC tax withheld from wages	\$4,871.00	\$4,872.00	\$1,437.00
Total NYS and NYC tax due per return	3,274.00	3,791.00	595.00
Refund claimed per return	\$1,597.00	\$1,081.00	\$842.00

3. By letter dated November 7, 2005, the Division denied in full the refunds claimed on each of petitioners’ personal income tax returns for the years 1998, 1999 and 2001. The basis for the Division’s denial was that all three personal income tax returns were filed on August 23, 2005 and that this date is beyond the applicable statute of limitations for credit or refund.

***SUMMARY OF PETITIONERS’ POSITION***

4. Petitioners do not dispute that their personal income tax returns for 1998, 1999 and 2001 were first filed on August 23, 2005 and that the refund sought on each return was claimed after the statute of limitations for credit or refund had expired. Petitioners were married in 1984 and since their marriage Laura Gundersen has taken responsibility for all financial and tax

matters. Petitioners assert that during the years in question Laura Gundersen suffered from severe depression, which illness prevented her from making many decisions, including paying monthly bills and also the filing of tax returns. It is alleged that Laura Gundersen was able to keep her illness from her husband and that her actions almost resulted in the foreclosure on their personal residence, along with a host of other financial and tax problems. Petitioners believe that, given the extenuating circumstances found herein, they should be allowed the refunds as claimed on their 1998, 1999 and 2001 personal income tax returns, notwithstanding the fact that the returns were filed after the 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 three years at issue, all of petitioners’ payments of tax were made via taxes withheld from wages. Pursuant to Tax Law § 687(i), tax withheld from wages is deemed to have been paid on April 15 of the following year. Accordingly, for the 1998 tax year the tax withheld is deemed paid on April 15, 1999, the tax withheld for 1999 is deemed paid on April 15, 2000 and the tax withheld for 2001 is deemed paid on April 15, 2002. Thus, it is clear that petitioners’ claims for refund for 1998, 1999 and 2001, each dated August 23, 2005, were not filed within

three years of the dates the taxes were paid. Accordingly, petitioners' claims for refund for all three tax years in question were 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 is 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 [1999]), have upheld the validity of applying the three-year statute of limitations for refund in cases with facts similar to those found herein. 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' claims for refund they must be denied as not timely filed. Furthermore, although petitioner Laura Gundersen's illness may have played a significant part in petitioners' failure to timely file claims for refund for the three years in question, illness is not recognized under New York Tax Law as a basis to extend or ignore the statute of limitations for credits or refunds (*see Matter of Insalaco*, Tax Appeals Tribunal, November 13, 2003).

D. While it is unfortunate that the overpayments made by petitioners for the 1998, 1999 and 2001 tax years 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 John J. and Laura Gundersen is denied and the Division's Notice of Disallowance dated November 7, 2005 is sustained.

DATED: Troy, New York  
February 7, 2008

/s/ James Hoefer  
PRESIDING OFFICER