

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :

of :

DON C. AND LINDA J. GOODSPED : DETERMINATION
DTA NO. 821828

for Redetermination of a Deficiency or for Refund of New :
York State Personal Income Tax under Article 22 of the
Tax Law for the Year 2000. :

Petitioners, Don C. and Linda J. Goodspeed, 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 year 2000.

The Division of Taxation, by its representative, Daniel Smirlock, Esq. (Kevin R. Law, Esq., of counsel), filed a motion for an order pursuant to 20 NYCRR 3000.5 and 3000.9(b) granting summary determination to the Division of Taxation on the ground that there exist no genuine issues of fact and the Division's motion must be granted as a matter of law. The Division submitted the affidavit of Kevin R. Law, dated December 26, 2007, with annexed exhibits including the affidavit of Jerry Horgan, dated December 21, 2007, with attached exhibits in support of its motion. On January 25, 2008, petitioners, appearing by Joseph A. Maria, P.C. (Joseph A. Maria, Esq., of counsel) filed the affirmation of Joseph A. Maria, Esq., dated January 24, 2008, with annexed exhibits including the affidavit of Don C. Goodspeed, dated January 24, 2008, in opposition to the motion of the Division of Taxation, beginning the 90-day period for issuance of the determination.

After due consideration of the pleadings, documents and arguments presented, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioners' claim for credit or refund of personal income tax for the year 2000 on the basis that the claim was filed after the expiration of the applicable statute of limitations for credit or refund.

FINDINGS OF FACT

1. On April 14, 2000, petitioners, Don C. and Linda J. Goodspeed, sold real property located on Mountain Street in Camden, Maine, for a total consideration of \$240,000.00. At the time of the transfer, 2.5 % of the sales price, i.e., \$7,250.00, was withheld from this sale by the withholding agent (buyer or other transferee), and forwarded to Maine Revenue Services, Income/Estate Tax Division, along with a Form REW-1, Maine Real Estate Withholding Return for Transfer of Real Property (Maine real estate withholding return), which identified petitioners as the sellers subject to withholding.

2. Petitioners timely filed a New York State resident income tax return for the year 2000 on or about November 29, 2001. On their return, they reported New York adjusted gross income of \$249,527.00 and taxable income of \$229,769.00. They calculated New York State tax due in the amount of \$15,739.00, reported remitting a New York State estimated tax payment of \$18,000.00 with their form IT-370, Application for Automatic Extension of Time to File for Individuals, and requested a refund in the amount of \$2,261.00 on their return for 2000. A refund in the amount of \$2,255.00 was computed and paid by the Division of Taxation (the Division) for the year 2000 on or about December 21, 2001.

3. Shortly before May 6, 2005, petitioners received a request for filing notice, regarding the transfer of the real property located on Mountain Street, Camden, Maine, from Maine Revenue Services. In response to petitioners' message left on her voice mail, Phoebe DiPietro, a Management Analyst I in the Maine Revenue Services' Tax Compliance Unit, sent a letter, dated May 6, 2005, advising petitioners that they were required to file a Maine income tax return for the year 2000 because they were nonresidents who had a recognized gain relating to the sale of Maine property in that year. The letter further advised petitioners that the payment withheld at the time of the sale was an estimated payment for any tax liability they may have, not a determination of tax due. For petitioners' convenience, Ms. DiPietro enclosed the 2000 Maine Individual Income Tax Booklet for nonresident/part year resident.

4. On June 29, 2005, Maine Revenue Services sent a notice demanding petitioners file a Maine income tax return for the year 2000 within 30 days from the date of receipt of the notice. Petitioners filed their Maine income tax return including the nonresident and part-year resident schedule for the year 2000 on or about July 25, 2005. On their Maine tax return, petitioners reported net tax, after a nonresident credit, of \$13,767.00 less the real estate withholding tax payment of \$7,250.00, for tax due in the amount of \$6,517.00. Maine Revenue Services issued a Billing Notice to petitioners stating its final determination of tax due in the amount of \$14,184.00 for the year 2000, and interest, penalties and costs totaling \$5,402.25 on August 13, 2006.

5. On or about August 2, 2005, petitioners filed an amended 2000 New York State resident income tax return. On this amended return, petitioners claimed a credit for income taxes subsequently paid to the State of Maine on the gain from the 2000 sale of real property located in Camden, Maine, and requested a refund of \$10,879.00. In the letter accompanying petitioners' amended return, Mr. Goodspeed stated he called the Division's tax telephone center and was

informed that he would not be able to claim the double tax paid to two different states on the sale of the Maine property because the three-year statute of limitations for filing an amended return had expired. Mr. Goodspeed also maintained, in his letter, that he paid his tax in good faith to what he believed was the proper tax authority, he had no idea until May 2005 that he should have paid Maine instead of New York State, and as such he found the Division's taxing position to be unfair and a grave financial hardship on him.

6. On February 24, 2006, the Division issued a Notice of Disallowance to petitioners which stated, in pertinent part, as follows, "New York State Tax Law does not permit us to allow the claim for refund. You should have filed your claim within three years from the date the return was due or two years from the date the tax was paid, whichever is later."

SUMMARY OF PETITIONERS' POSITION

7. Petitioners admit that their claim for refund for the year 2000 was filed beyond the statutory period set forth in Tax Law § 687(a). However, in their response to the Division's motion, petitioners contend that they were unaware of the need to file a 2000 Maine income tax return or pay additional income tax to the State of Maine until May 2005. They further contend that they promptly filed their Maine return and paid the additional tax calculated as due on that return in July 2005. They maintain they did not attend the closing for the April 14, 2000 sale of their Maine property in person because such closings are done in escrow; however, the closing papers received from the escrow agent included a Maine real estate withholding return, which stated the amount of tax withheld from the sale proceeds to be \$7,250.00. Petitioners further maintain it was their belief that the amount withheld from the sale proceeds, and forwarded with a Maine real estate withholding return by the withholding agent to Maine Revenue Services, represented the entire amount of tax due to the State of Maine on the sale of the property. They

aver that they were never informed otherwise until they received a filing notice from Maine Revenue Services in 2005. Given their mistake, petitioners contend their refund should be allowed pursuant to the special refund authority under Tax Law § 697(d).

CONCLUSIONS OF LAW

A. In reviewing a motion for summary determination, an administrative law judge is constrained by the following guidelines:

The motion shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party. The motion shall be denied if any party shows facts sufficient to require a hearing of any material and triable issue of fact. Where it appears that a party, other than the moving party, is entitled to a summary determination, the administrative law judge may grant such determination without the necessity of a cross-motion (20 NYCRR 3000.9[b][1]; *see also*, Tax Law § 2006[6]).

Furthermore, a motion for summary determination made before the Division of Tax Appeals is “subject to the same provisions as motions filed pursuant to section three thousand two hundred twelve of the CPLR.” (20 NYCRR 3000.9[c]; *see also Matter of Service Merchandise Co.*, Tax Appeals Tribunal, January 14, 1999.) Summary determination is a “drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue” (*Moskowitz v. Garlock*, 23 AD2d 943, 259 NYS2d 1003, 1004 [1965]; *see Daliendo v. Johnson*, 147 AD2d 312, 543 NYS2d 987, 990 [1989]). Because it is the “procedural equivalent of a trial” (*Museums at Stony Brook v. Village of Patchogue Fire Dept.*, 146 AD2d 572, 536 NYS2d 177, 179 [1989]), undermining the notion of a “day in court,” summary determination must be used sparingly (*Wanger v. Zeh*, 45 Misc 2d 93, 256 NYS2d 227, 229 [1965], *affd* 26 AD2d 729 [1966]). It is not for the court “to resolve issues of fact or determine matters of credibility but merely to determine whether such facts exist” (*Daliendo*, 543

NYS2d at 990). If any material facts are in dispute, if the existence of a triable issue of fact is “arguable,” or if contrary inferences may be reasonably drawn from undisputed facts, the motion must be denied (*Glick & Dolleck, Inc. v. Tri-Pac Export Corp.*, 22 NY2d 439, 293 NYS2d 93, 94 [1968]; *Gerard v. Inglese*, 11 AD2d 381, 206 NYS2d 879, 881 [1960]).

B. In general, Tax Law § 687(a) provides that a claim for refund of an overpayment of income tax shall be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later. As previously noted, in the present matter, it is undisputed that petitioners’ claim for refund was filed after the expiration of the time period set forth in Tax Law § 687(a). However, petitioners contend that their claim for refund should be granted based upon the special refund authority in Tax Law § 697(d).

C. Tax Law § 697(d) provides as follows:

Special refund authority. - - 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.

D. To invoke the special refund authority, it must be determined whether the money paid by petitioners was paid under a mistake of fact or a mistake of law. When presented with this question in the past, the Tax Appeals Tribunal has utilized the following standard:

A mistake of fact has been defined as an understanding of the facts in a manner different than they actually are (54 Am Jur 2d Mistake, Accident or Surprise § 4; *see also, Wendel Foundation v. Moredall Realty Corp.*, 176 Misc 1006, 29 NYS2d 451). A mistake of law, on the other hand, has been defined as acquaintance with the existence or nonexistence of facts, but ignorance of the legal consequences following from the facts (54 Am Jur 2d Mistake, Accident or Surprise § 8; *see also, Wendel Foundation v. Moredall Realty Corp., supra*). (*Matter of Wallace*, Tax Appeals Tribunal, October 11, 2001.)

E. Based upon the foregoing standard, it is clear that petitioners' contention is without merit and that petitioners are not entitled to a refund under Tax Law § 697(d). Petitioners were aware that tax was due to the State of Maine on the sale of the Camden, Maine, property in April 2000. However, they mistakenly believed that the tax withheld at the real estate closing and forwarded with a Maine real estate withholding return by the withholding agent to Maine Revenue Services in April 2000 constituted the total amount of income tax due the State of Maine for the year 2000. Petitioners' failure to file a Maine nonresident income tax return and to claim the appropriate credit on their 2000 New York income tax return was based on their erroneous interpretation of Maine law, or their ignorance of the legal consequences following from the facts. Thus, their failure to timely file a refund claim for the year 2000 was based upon a mistake of law, not a mistake of fact. Accordingly, the special refund authority, as provided in Tax Law § 697(d), is inapplicable to this matter.

F. Since petitioners have admitted that the statute of limitations for filing a claim for refund for the year 2000 expired prior to the filing of their refund claim in August 2005, and it has been determined that the special refund authority under Tax Law § 697(d) is not applicable in this proceeding, there remains no material and triable issue of fact. Accordingly, the Division is entitled to summary determination on the law. Petitioners' claim for refund of personal income tax for the year 2000 is barred and was properly denied as untimely filed pursuant to Tax Law § 687.

G. The Division of Taxation's motion for summary determination is granted; the petition of Don C. and Linda J. Goodspeed is denied; and the Notice of Disallowance, dated February 24, 2006, disallowing petitioners' refund claim for the year 2000 is hereby sustained.

DATED: Troy, New York
April 24, 2008

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE