

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
WILLIAM AND ASHLEY WHAMOND : DETERMINATION
for Redetermination of a Deficiency or for Refund of : DTA NO. 821845
New York State Personal Income Tax under Article 22 :
of the Tax Law for the Year 2002. :

Petitioners, William and Ashley Whamond, 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 2002.

On March 6, 2008 and March 17, 2008, respectively, petitioners, appearing by Joseph M. Albero, CPA, and the Division of Taxation, appearing by Daniel Smirlock, Esq. (Michele W. Milavec, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by July 11, 2008, which date commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Timothy J. Alston, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioners' claim for refund pursuant to Tax Law § 687(a).

FINDINGS OF FACT

1. Petitioners, William and Ashley Whamond, jointly filed their 2002 New York State Nonresident and Part-Year Resident Income Tax Return (Form IT-203) on June 29, 2006. Petitioners reported total New York State personal income tax and New York City resident income tax due of \$106,524.00, New York State tax withheld of \$80,451.00, New York City tax withheld of \$44,359.00, and an overpayment of tax of \$18,369.00.
2. Petitioners claimed a refund of the overpayment on their return.
3. The State and City tax withheld as reported on the return was so withheld by petitioners' employers during 2002.
4. Petitioners did not file any extension forms for the tax year 2002.
5. By letter dated November 3, 2006, the Division of Taxation (Division) denied petitioners' claimed refund as untimely.

CONCLUSIONS OF LAW

A. A claim for refund or credit of an overpayment of personal income tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later (Tax Law § 687[a]). With certain exceptions not relevant herein, Tax Law § 687(e) specifically precludes the granting of any refund or credit where a claim is filed outside the prescribed periods. It is well established that periods of limitations “must be strictly adhered to” (*Kavanagh v. Noble*, 332 US 535, 539 [1947]) and are “not open to discretionary change by the courts no matter how compelling the circumstances” (*Cohen v. Pearl River Union Free School Dist.*, 70 AD2d 94, 99, 419 NYS2d 998, 1001 [1979] *revd on other grounds* 51 NY 256, 434 NYS2d 138 [1980]).

B. For purposes of section 687, income tax withheld during any taxable year is deemed to have been paid by the taxpayer on April 15 of the following year (Tax Law § 687[i]). Accordingly, the tax withheld from petitioners during 2002 is deemed to have been paid on April 15, 2003. The two-year limitations period thus expired on April 15, 2005. The refund claim at issue was filed on June 29, 2006, well-beyond the expiration of the two-year period.

C. Since the refund claim was filed concurrently with petitioners' 2002 return, it was technically within the three-year limitations period. Unfortunately for petitioners, however, Tax Law § 687(a) further provides that if the claim is filed within the three-year period, the amount of refund allowable may not exceed the portion of tax paid within the three-year period immediately preceding the filing of the refund claim plus the period of any extension of time for filing the return.

D. Petitioners did not pay any portion of their 2002 overpayment of tax claimed as a refund during the three-year period immediately preceding the filing of the refund claim. As noted, petitioners' refund claim was filed on June 29, 2006, as part of their 2002 income tax return. The three-year period immediately preceding petitioner's refund claim thus runs from June 29, 2003. As also noted, the overpayment, i.e., the income tax withheld, was deemed paid on April 15, 2003, more than three years before the filing of the refund claim. The Division therefore properly denied petitioners' refund claim pursuant to Tax Law § 687(a).

E. In their petition, petitioners contend that they filed extension forms for 2002. The Division's records, however, do not indicate that any such extension forms were filed and petitioners did not produce a copy of any such extension forms. This determination thus finds that petitioners did not file any extension forms for the 2002 tax year (*see* Finding of Fact 4).

F. The petition of William and Ashley Whamond is denied, and the Division of Taxation's disallowance of petitioners' refund claim is sustained.

DATED: Troy, New York
September 18, 2008

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE