

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
CORNELIUS W. THORNTON	:	DETERMINATION
	:	DTA NO. 821888
for Redetermination of a Deficiency or for Refund of	:	
New York State and City Personal Income Taxes	:	
under Article 22 of the Tax Law and the New York	:	
City Administrative Code for the Year 2001.	:	

Petitioner, Cornelius W. Thornton, filed a petition for redetermination of a deficiency or for refund of New York State and City personal income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the year 2001.

The Division of Taxation, by its representative, Daniel Smirlock, Esq. (Michele W. Milavec, Esq., of counsel), brought a motion, filed March 18, 2008, seeking an order of summary determination in the above-referenced matter pursuant to 20 NYCRR 3000.5 and 3000.9(b)(1). Petitioner, appearing by Mayer Rispler, CPA, did not submit a response to the Division's motion, although permitted to do so by April 17, 2008. Thus, the 90-day period for issuance of this determination began on April 17, 2008. After due consideration of the documents and arguments presented, Thomas C. Sacca, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for credit or refund of personal income tax 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. Petitioner, Cornelius W. Thornton, filed his 2001 New York State and City personal income tax return on April 19, 2006. The return requested a refund in the amount of \$9,555.00. The 2001 personal income tax return was signed and dated April 18, 2006. The tax paid on the 2001 tax return is entirely from withholding tax.

2. Petitioner was in lower Manhattan on the day of the September 11, 2001 terrorist attacks. Following the tragedy, according to petitioner, he felt a deep sense of loss and an uncertainty as to the future of his own economic situation as well as the economy as a whole. Finally able to deal with these feelings of despair, he attempted to retrieve his financial documents only to discover that the building where they were kept was under quarantine and he was unable to gain access to the building. Only with the assistance of the Internal Revenue Service which provided him with the necessary documentation was he able to file his 2001 tax returns.

3. The Division of Taxation (Division), on March 9, 2007, issued a Notice of Disallowance to petitioner denying in full the \$9,555.00 refund claimed on his 2001 personal income tax return. The basis for the Division's denial was that the return, received on April 19, 2006, was filed after the applicable statute of limitations for credit or refund had expired.

CONCLUSIONS OF LAW

A. A motion for summary determination 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 (20 NYCRR 3000.9[b][1]).

B. Section 3000.9(c) of the Rules of Practice and Procedure of the Tax Appeals Tribunal provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316, 317 [1985], *citing Zuckerman v. City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Inasmuch as summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is “arguable” (*Glick & Dolleck v. Tri-Pac Export Corp.*, 22 NY2d 439, 293 NYS2d 93 [1968]; *Museums at Stony Brook v. Village of Patchogue Fire Dept.*, 146 AD2d 572, 536 NYS2d 177 [1989]). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (*Gerard v. Inglese*, 11 AD2d 381, 382, 206 NYS2d 879, 881 [1960]).

“To defeat a motion for summary judgment, the opponent must produce ‘evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim,’ and ‘mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient’” (*Whelan v. GTE Sylvania*, 182 AD2d 446, 449, 582 NYS2d 170, 173 [1992], *citing Zuckerman*).

C. Here, petitioner did not respond to the Division’s motion. Since petitioner did not appear on this motion and presented no evidence to contest the facts alleged in the affidavits submitted by the Division, those facts are deemed admitted (*see Kuehne & Nagel, Inc. v. Baiden*, 36 NY2d 539, 544, 369 NYS2d 667, 671 [1975]; *Whelan* at 449, 582 NYS2d at 173).

D. 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

E. For the 2001 tax year, petitioner paid tax via taxes withheld from wages during the year 2001. 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, filed April 19, 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.

F. 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 claim for refund, it must be denied as not timely filed.

G. While it is unfortunate that the refund claimed by petitioner for the 2001 tax year 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.

H. Petitioner argued that he was prevented from filing his original return in a timely manner due to the stress created by the September 11, 2001 terrorist attacks and later as a result of his inability to obtain his records which were quarantined in a building near the World Trade Center towers.

Governor Pataki recognized the hardship inflicted on all New Yorkers as a result of the terrorist attacks on the World Trade Center, and he directed the Division to extend various tax related deadlines. The Governor's notice N-01-14, Announcement Regarding the Terrorist Attacks of September 11, 2001, and notice N-01-16, Supplemental Announcement Regarding the Terrorist Attacks of September 11, 2001, specifically stated that all tax related deadlines from September 11, 2001 through December 10, 2001 were extended to December 10, 2001. (*See e.g. Matter of Lamanna*, Tax Appeals Tribunal, March 13, 2003 [holding that a filing even a day late from the N-01-14 extension is considered untimely].) However, this extension does not provide petitioner with relief for his late filing on April 19, 2006 of his 2001 personal income tax return because the deadline for his refund claim fell outside of the affected date range.

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. In addition, petitioner has not established for what period he was unable to enter the building where his records were allegedly kept, and thus it cannot be determined if the delay in filing his 2001 return was a result of his inability to access his records.

I. The petition of Cornelius W. Thornton is denied, and the Division of Taxation's Notice of Disallowance, dated March 9, 2007, is sustained.

DATED: Troy, New York
June 26, 2008

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE