

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ARLENE P. McMILLAN** : DETERMINATION  
for Redetermination of a Deficiency or for Refund of : DTA NO. 822399  
New York State Personal Income Tax under Article 22 :  
of the Tax Law for the Years 1999, 2000 and 2002. :

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Petitioner, Arlene P. McMillan, 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 years 1999, 2000 and 2002.

The Division of Taxation, by its representative, Daniel Smirlock, Esq. (Sarah Dasenbrock, Esq., of counsel), brought a motion dated October 8, 2008 seeking summary determination in the above-referenced matter pursuant to Tax Law § 2006(6) and section 3000.9(b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner did not file a response to the Division of Taxation's motion. Accordingly, the 90-day period for the issuance of this determination began on November 10, 2008, the due date for petitioner's response. Based upon the motion papers, the affidavits and documents submitted therewith, and all pleadings and documents submitted in connection with this matter, Arthur S. Bray, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly denied petitioner's claim for refund on the basis that said claim was filed beyond the statute of limitations period for a refund.

***FINDINGS OF FACT***

1. On September 13, 2006, petitioner, Arlene P. McMillan, filed New York State and City of New York resident income tax returns for the years 1999, 2000 and 2002. To the extent pertinent to this matter, the returns reported the following:

a. The return for the year 1999 reported total New York State and City of New York taxes of \$6,682.00 and total payments of \$10,557.68 resulting in an overpayment of \$3,875.68.

According to the return, the payments included estimated tax payments and amounts paid with an extension form of \$8,832.00.

b. The return for the year 2000 reported total New York State and City of New York taxes of \$5,707.00 and total payments of \$11,981.68 resulting in an overpayment of \$6,274.68. It also reported that the payments included estimated tax payments and amounts paid with an extension form of \$11,675.68.

c. The return for the year 2002, did not report any taxes due. It also reported a City of New York school tax credit of \$63.00 and that the payments included estimated tax payments and amounts paid with an extension form of \$4,166.00 resulting in overpayments of \$4,229.00.

2. For 1999, petitioner had tax withheld from her wages and made estimated tax payments on June 17, 1999, September 17, 1999 and January 24, 2000. For 2000, tax was withheld from petitioner's wages and she made estimated tax payments on January 4, 2001 and April 19, 2001.

3. On February 15, 2007, the Division of Taxation (Division) mailed a series of three letters to petitioner, one for each year in issue, advising her that her claims for refunds were denied because they were filed beyond the statute of limitations.

***SUMMARY OF THE PARTIES' POSITIONS***

4. The Division submits that the total overpayment of tax for 1999 was \$1,433.68 and for 2000 was \$1,354.00. However, the Division also maintains that the claims for refund were barred by the statute of limitations.

5. Petitioner contends that the three-year time limit on applying for a refund is only mentioned on page 41 of the income tax instructions. She submits that she did not know that she had only three years since she did not notice this rule. If she knew this rule, she would have made an effort to file on time. Petitioner also thought that she was timely because she paid all of the estimated taxes on time.

***CONCLUSIONS OF LAW***

A. Tax Law § 687(a) provides as follows:

General. -- Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within (i) three years from the time the return was filed, (ii) two years from the time the tax was paid . . . whichever of such periods expires the latest. . . . 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. . . .

B. For the year 2002, the last year in issue, petitioner paid taxes by estimated payments. Pursuant to Tax Law § 687(i), petitioner's payment of estimated tax for the year 2002, the last year in issue, was deemed to have been paid by April 15, 2003. Accordingly, petitioner's claim for refund for the year 2002, which was made on September 13, 2006, was untimely because it was not made within two years from the time the tax was paid. The three-year period is unavailing because the tax was paid more than three years before the filing of the claim for refund. Since the personal income taxes for the years 1999 and 2000 were paid prior to the 2002 tax year, and petitioner's refund claims for these years were also filed on September 13, 2006, it

is clear that petitioner's claims for the 1999 and 2000 tax years were also filed after the statute of limitations for refund had expired.

C. It is unfortunate that the refunds claimed by petitioner for the years 1999, 2000 and 2002 cannot be granted because of the expiration of the statute of limitations. However, such a conclusion is clearly mandated by the Tax Law § 687(e) which provides:

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 limitation 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.

D. Petitioner argues that she was unaware that there was a three-year statute of limitations. However, this does not excuse the delay in filing the claim for refund. "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 her misinterpretation of the Tax Law as a rationale for allowing her late-filed claims for refund. Furthermore, petitioner's assertion that she paid the estimated taxes on time merely confirms the conclusion that the claims for refund exceeded the two-year statute of limitations period of Tax Law § 687(a).

E. The petition of Arlene P. McMillan is denied, and the Division of Taxation's notices of disallowance, dated February 15, 2007, are sustained.

DATED: Troy, New York  
January 29, 2009

/s/ Arthur S. Bray  
ADMINISTRATIVE LAW JUDGE