

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ANGEL DIAZ : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 822877
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 1998 and 2000. :

Petitioner, Angel Diaz, 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 1998 and 2000.

On August 6, 2009 and August 19, 2009, respectively, the Division of Taxation by Daniel Smirlock, Esq. (Kevin R. Law, Esq., of counsel), and petitioner, appearing pro se, waived a hearing and agreed to submit the matter for determination based upon documents and briefs to be submitted by February 3, 2010, which date commenced the six-month period for issuance of this determination (Tax Law § 2010[3]). After due consideration of the evidence and arguments submitted, Catherine M. Bennett, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for credit or refund for the 1998 and 2000 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. Angel Diaz (petitioner) was employed at the Woodhull Medical Center, Brooklyn, New York, in 1998, before his incarceration in the Massachusetts Correctional Institution (MCI) on November 6, 1998, where he remains to date without interruption.

2. During 1998, before his incarceration, he earned \$25,932.54, and had New York State and City income taxes withheld totaling \$1,453.00. Petitioner claims he requested a copy of his W-2 for 1998 and income tax forms in order to file applicable tax returns for 1998, in July 1999, though there is no documentation of such request in the record. Petitioner submitted a copy of the envelope from the Division of Taxation (Division) in which he received the forms, but not the W-2, postmarked August 2, 2009.

3. In 2000, petitioner was paid \$6,766.27 for wages earned in 1998 that had never been paid to him. New York State and City income taxes withheld on the wages totaled \$717.84.

4. On or about January 22, 2001, petitioner corresponded with the IRS explaining that he could not file his 1998 income tax return because he did not have the wage information he needed to file, or the tax return for the previous year, 1997. He informed the IRS that he was incarcerated in a Massachusetts correctional facility.

5. The IRS responded on or about February 2, 2001, indicating that it was unable to fulfill petitioner's request without additional information, including a completed Form 4506, payment and certain identification that served to verify his signature.

6. On or about February 8, 2001, petitioner filed Form 4506, Request for Copy or Transcript of Tax Form, with the Internal Revenue Service (IRS), in an attempt to acquire transcripts or copies of his Form 1040 for 1997, 1998 and 1999.

7. In response to petitioner's February 8, 2001 submission, the IRS contacted petitioner for additional information. When it was not received, on or about April 18, 2001, the IRS closed petitioner's file concerning this request, indicating that the required identification was still absent and must be provided if petitioner reapplied. Petitioner did not have the requisite identification to send to the IRS.

8. When petitioner could not acquire his W-2s, he filed his federal income tax returns for 1998 and 2000, using the last pay stubs from his former employer, and received refunds from the IRS for both years.

9. Petitioner corresponded with the Division in a letter dated September 11, 2008, requesting information on how to claim his refunds for 1998 and 2000.

10. On or about October 22, 2008, petitioner filed the following:

a. A New York State Resident Income Tax Return, Form IT-200, for tax year 1998, reporting wages of \$25,932.54, and claiming a refund in the amount of \$788.61.

b. A New York State Resident Income Tax Return, Form IT-200, for tax year 2000, reporting wages of \$6,766.27, and claiming a refund in the amount of \$717.84.

Included with petitioner's returns was a copy of his September 11, 2008 correspondence.

11. The Division issued a Notice of Disallowance to petitioner pertaining to tax year 1998,² dated January 26, 2009, disallowing petitioner's claimed refund of \$788.00, stating that:

The Tax Law provides for the granting of a refund or credit if the request is filed within three years from the time the return was required to be filed or within two years from the time the tax was paid, whichever is later.

² The record does not reflect that a Notice of Disallowance was issued for tax year 2000, and there is no other evidence that the Division acted upon petitioner's refund claim for 2000. Since the Division failed to act upon petitioner's claim for refund for tax year 2000 within six months after the claim was filed, it is deemed denied, giving petitioner the right to file a petition pursuant to Tax Law § 689(c)(3)(A). Thus, the Division of Tax Appeals has jurisdiction over tax year 2000 as well.

Our records show the return on which you requested a refund or credit was filed beyond the statute of limitations as prescribed by the Tax Law.

SUMMARY OF THE PARTIES' POSITIONS

12. Petitioner argues that Tax Law § 687(a) and (i) were not meant to be applicable to disqualify a taxpayer from obtaining a refund where that taxpayer could not file on time for reasons beyond his control, especially after attempting to utilize all available resources to acquire accurate information to do so. Since section 687(a) and (i) do not apply, petitioner requests his refunds be issued.

13. The Division maintains that it properly denied petitioner's claims for refund for 1998 and 2000 on the basis that the claims were not timely filed before the statute of limitations had expired.

CONCLUSIONS OF LAW

A. Tax Law former § 686 provides, in relevant part, as follows:

(a) General. - The commissioner of taxation and finance, *within the applicable period of limitations*, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter on the person who made the overpayment, against any liability in respect of any tax imposed pursuant to the authority of this chapter or any other law on such person if such tax is administered by the commissioner of taxation and finance and, The balance shall be refunded by the comptroller out of the proceeds of the tax retained by him for such general purpose. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the commissioner of taxation and finance approved by the comptroller. The comptroller, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the person who made the overpayment and other information and data available in the files of the commissioner of taxation and finance (emphasis added).

B. The Division raises no dispute that the amount of tax withheld from petitioner's wages for 1998 and 2000 exceeded petitioner's tax liability for such years, thus resulting in an

overpayment by petitioner. Petitioner calculated such overpayment to be \$788.61 for tax year 1998 and \$717.84 for tax year 2000. The Division does not dispute the correctness of these sums. However, the Division has denied petitioner's claims for refund of these overpayments, citing to Tax Law former § 687, which, in pertinent part, imposed limitations on credits or refunds of overpayments 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, or if no return was filed, within two years from the time the tax was paid. 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 . . . Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

* * *

(e) 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.³

* * *

(i) Prepaid income tax.--For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him

³ The specified exceptions, Tax Law § 687(f) and § 690(d), do not apply to this case since there is no deficiency at issue in this proceeding.

on the fifteenth day of the fourth month following the close of his taxable year with respect to which such amount constitutes a credit or payment.

C. Tax Law § 687(a) required petitioner to file his claim for refund within the later of three years from the time his return was filed or two years from the time the tax was paid. The only tax payments by petitioner for 1998 and 2000 were the amounts withheld from his wages for those years. Under Tax Law § 687(i), these amounts were deemed paid on April 15, 1999 and April 15, 2001, respectively. Petitioner's 1998 return, due to be filed by April 15, 1999, was filed October 22, 2008, and included an attached letter requesting a refund. Since petitioner filed such returns and made a request for his refunds at the same time, the date on which petitioner filed is also the date the refund claim was made. Thus, petitioner claimed a refund within three years from the time his 1998 and 2000 returns were filed. While petitioners' refund claims were not filed within two years after the tax was paid, they were filed within three years after the return was filed. Accordingly, the refund claims were timely filed pursuant to Tax Law § 687(a).

D. Notwithstanding their timeliness, however, petitioners' claims for refunds were properly denied by the Division. Where, a refund claim is made within three years from the filing of a return, Tax Law § 687(a) limits the amount of any refund to the amount of tax paid within the three-year period immediately preceding the filing of the refund claim. Since petitioner's payment of tax via withholding occurred more than three years before the filing of his claims for refund, Tax Law § 687(a) bars any refund to petitioner in this case. The Division properly disallowed petitioner's request for refunds for 1998 and 2000.

E. 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 these cases. 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 stated 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 correctly denied petitioner's claim for refund as not timely filed.

F. While it is unfortunate that the overpayments made by petitioner for the 1998 and 2000 tax years cannot be refunded or credited to him 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:

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.

G. The petition of Angel Diaz is denied and the Division's Notice of Disallowance dated January 26, 2009 is sustained.

DATED: Troy, New York
July 29, 2010

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE