

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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| In the Matter of the Petition | : | |
| of | : | |
| MICHAEL BURKE | : | DETERMINATION |
| | : | DTA NO. 824933 |
| for Redetermination of a Deficiency or for Refund of | : | |
| Personal Income Tax under Article 22 of the Tax Law | : | |
| for the Year 1999. | : | |

Petitioner, Michael Burke, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1999.

On September 14, 2012, the Division of Taxation, by its representative, Mark F. Volk, Esq. (Michelle M. Helm, Esq., of counsel), filed a motion seeking summary determination in its favor pursuant to Tax Law § 2006(6) and 20 NYCRR 3000.9(b). Accompanying the motion was the affirmation of Ms. Helm, dated September 14, 2012, the affidavit of James Mertz, dated September 13, 2012, and annexed exhibits in support of the motion. Petitioner, appearing pro se, did not respond to the motion. Therefore, the 90-day period for issuance of this determination commenced on October 15, 2012, the date on which petitioner's time to serve a response to the Division of Taxation's motion expired.¹ After due consideration of the affirmation, affidavit, annexed exhibits, and all pleadings and proceedings had herein, Winifred M. Maloney, Administrative Law Judge, renders the following determination.

¹ October 14, 2012 is the 30th day from September 14, 2012. However, as October 14, 2012 fell on a Sunday, petitioner's response to the Division of Taxation's motion was required to be filed by Monday, October 15, 2012 (*see* General Construction Law §§ 20, 25-a).

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for credit or refund of personal income tax for the 1999 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, Michael Burke, filed his 1999 New York State personal income tax return on May 20, 2008. The return requested a refund in the amount of \$4,054.08. The 1999 personal income tax return was signed and dated May 15, 2008. The tax paid on the 1999 tax return is entirely from tax withheld from wages and distributions from the SAP America, Inc., 401(k) profit sharing plan and trust.

2. On June 25, 2010, the Division of Taxation (Division) issued a Notice of Disallowance to petitioner denying in full the \$4,054.08 refund claimed on his 1999 personal income tax return. The basis for the Division's denial was that the return, received on May 20, 2008, was filed after the applicable statute of limitations for credit or refund had expired.

3. In his petition filed with the Division of Tax Appeals, petitioner asserts that the direct cause of his failure to timely file his 1999 income tax return was his involvement in a September 1998 accident that affected him physically and mentally.

4. In his affidavit, sworn to on September 13, 2012, James Mertz, Tax Technician I, who is responsible for, among other things, reviewing and processing personal income tax returns, indicated that his review of petitioner's filing history indicated that he did not file a personal income tax return for the year 1999 prior to May 20, 2008.

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. In the instant matter, petitioner did not respond to the Division's motion or submit any evidence to contest the facts set forth in the Division's affirmation, affidavit and attached exhibits. Consequently those facts may be deemed admitted (*see Kuehne & Nagel v. Baiden*, 36 NY2d 539, 544, 369 NYS2d 667, 671 [1975]; *John William Costello Assocs. v. Standard Metals*, 99 AD2d 227, 472 NYS2d 325 [1984], *appeal dismissed* 62 NY2d 942 [1984]).

Accordingly, upon the conclusion that no question of fact requiring a hearing exists, summary determination may be granted in this matter.

C. As relevant to this proceeding, Tax Law § 687 (former[a]) provides as follows:

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

D. For the 1999 tax year, petitioner paid tax via taxes withheld from wages and distributions from a 401(k) profit sharing plan and trust during 1999. Pursuant to Tax Law § 687(i), all of the payments of tax petitioner made for 1999 are deemed to have been paid on April 15, 2000. Accordingly, petitioner's claim for refund for 1999, filed May 20, 2008, 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 1999 tax year was filed after the statute of limitations for refund had expired.

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 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 correctly denied petitioner's claim for refund as not timely filed.

F. While it is unfortunate that the refund claimed by petitioner for the 1999 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.

G. Petitioner asserts that he was unable to timely file his 1999 tax return due to medical disabilities. In *Matter of Levine* (Tax Appeals Tribunal, August 7, 2008) the taxpayer argued that there should be a tolling of the statute of limitations that the Division had applied to a substantively well founded claim for refund because he was suffering from a medical disability. Relying, in part, upon *United States v. Brockamp* (519 US 347, 352 [1997]), the Tribunal rejected this argument and quoted the following portion of the Court's decision:

To read an "equitable tolling" provision into these provisions, one would have to assume an implied exception for tolling virtually every time a number appears. To do so would work a kind of linguistic havoc. Moreover, such an interpretation would require tolling, not only procedural limitations, but also substantive limitations on the amount of recovery—a kind of tolling for which we have found no direct precedent. Section 6511's detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate to us that Congress did not intend the courts to read other unmentioned, open-ended, "equitable" exceptions into the statute that it wrote. There are no counter-indications. Tax Law, after all, is not normally characterized by case-specific exceptions reflecting individualized equities.

The same considerations that were presented in ***Brockamp*** are controlling in this matter.

H. The petition of Michael Burke is denied, and the Division of Taxation's Notice of Disallowance, dated June 25, 2010, is sustained.

DATED: Albany, New York
December 6, 2012

/s/ Winifred M. Maloney
ADMINISTRATIVE LAW JUDGE