

STATE TAX COMMISSION

James A. Hays
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 31, 1984

Margaret Daniels
165 St. Marks Place, Apt. 7B
Staten Island, NY 10301

Dear Ms. Daniels:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 & 1312 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MARGARET DANIELS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Tax under Articles 22 and 30	:	
of the Tax Law for the Year 1976.	:	

Petitioner, Margaret Daniels, 165 St. Marks Place, Apartment 7B, Staten Island, New York 10301, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under Articles 22 and 30 of the Tax Law for the year 1976 (File No. 38758).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 10, 1984 at 2:45 P.M. Petitioner, Margaret Daniels, appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's claim for refund for the year 1976 on the ground that said claim was filed beyond the statute of limitations for refund.

FINDINGS OF FACT

1. Petitioner herein, Margaret Daniels, filed a New York State and New York City income tax resident return for the year 1976 on September 14, 1981. On said return petitioner claimed she was due a partial refund of State and

City income tax withheld from her wages. Total State and City tax withheld amounted to \$334.09 and petitioner sought a refund of \$215.78.

2. On January 15, 1982, the Audit Division advised petitioner that "(a)s your 1976 Income Tax Return was not timely filed, the Statute bars us from issuing refund at this time." A petition for redetermination of the refund denial was thereafter timely filed by petitioner.

3. Petitioner maintains that she filed her 1976 New York State and New York City income tax return claiming a refund of \$215.78 sometime in 1977. Petitioner asserts that the 1976 return filed on September 14, 1981 was a "duplicate" of the return filed in 1977 and that said "duplicate" return was submitted at the request of the Audit Division. The Audit Division has no record of a 1976 return filed by petitioner other than the 1976 return filed on September 14, 1981. No credible documentary or other evidence was adduced at the hearing held herein to support that petitioner filed a 1976 return claiming a refund of \$215.78 in 1977.

4. Petitioner's U.S. Individual Income Tax Return for 1976 was audited by the Internal Revenue Service and said audit resulted in a proposed deficiency in tax. The proposed deficiency was finally disposed of via a decision of the United States Tax Court entered on July 6, 1979, wherein petitioner was found to have a deficiency in tax of \$291.00. Petitioner alternatively asserts that she has two (2) years and ninety (90) days from the date of the final Federal determination for 1976 in which to claim a refund and that the "duplicate" return filed on September 14, 1981 was within the two (2) year and ninety (90) day period.

CONCLUSIONS OF LAW

A. That through section 1312(a) of Article 30, the New York City personal income tax imposed by said Article is by its own terms tied into and contains essentially the same provisions as Article 22 of the Tax Law. Therefore, in addressing the issue presented herein, unless otherwise specified all references to particular sections of Article 22 shall be deemed references (though uncited) to the corresponding sections of Article 30.

B. That section 687(a) of the Tax Law provides, in pertinent part, that:

"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... 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..."

C. That pursuant to section 687(i) of the Tax Law income tax withheld from petitioner for the calendar year 1976 is deemed to have been paid on April 15, 1977.

D. That petitioner's initial and only claim for refund for the year 1976 was filed on September 14, 1981. Petitioner's only payment of tax for the year 1976 was made on April 15, 1977. That the claim for refund filed on September 14, 1981 for refund of taxes paid on April 15, 1977 was not a timely claim for refund within the periods prescribed by section 687(a) of the Tax Law, supra. Accordingly, petitioner is not entitled to a refund since the statute of limitations for refund expired prior to the date she filed her claim.

E. That section 687(c) of the Tax Law provides that a claim for an overpayment of tax resulting from Federal changes must be filed within two

years and ninety days from the date of the final Federal determination.

Section 687(c) further provides that the refund is limited to the amount of the reduction in tax attributable to the Federal changes. That the changes made to petitioner's Federal income tax liability for the year 1976 resulted in a deficiency in tax and not a refund. Accordingly, section 687(c) of the Tax Law is not applicable in the instant matter.

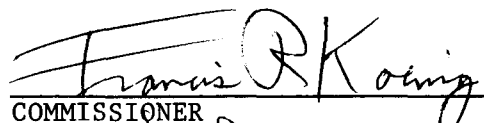
F. That the petition of Margaret Daniels is denied and the notice of refund denial dated January 15, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER